84-1801

No.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

INUPIAT COMMUNITY OF THE ARCTIC SLOPE,
a federally recognized Indian Tribe,
and
UKPEAGVIK INUPIAT CORPORATION
a Native Village Corporation, et al.
Petitioners,

v.

THE UNITED STATES OF AMERICA, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. May the United States extend its jurisdiction and control into sea-ice and marine areas continuously used and occupied by Natives without recognizing and protecting aboriginal rights in such areas?

2. Was the lower court correct in ruling that § 4(b) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1603(b), which by its terms extinguishes aboriginal rights "in Alaska," extinguishes aboriginal rights "outside Alaska"?

3. Was the lower court correct in refusing to apply accepted canons of construction to a statute affecting Native rights, which require that ambiguities be construed in favor of the Natives and that no Native rights be extinguished

without a plain and unambiguous statement?

4. Can the United States lawfully take action that threatens to deprive the Inupiat people of the means to subsist?1/

1/ Parties to the proceedings below: The four plaintiffs/appellants party to the proceedings below are the Inupiat Community of the Arctic Slope, a federally recognized Indian tribe; Ukpeagvik Inupiat Corporation, the Native village corporation for the village of Barrow; and Walton I. Ahmaogak and Andrew Oenga, individual Inupiat allottees.

The defendants/appellees below include federal, state and private parties. The federal defendants/appellees are the United States of America, the Secretary of the Interior and the Director of the Bureau of Land Management. The State defendants/appellees include the Governor of the State of Alaska and the Commissioner of the Alaska Department of Natural Resources. Private defendants/appellees are companies claiming interests in certain offshore oil leases and include Amoco Production Co.; Atlantic Richfield Company; B.P. Alaska Exploration, Inc.;

Footnote 1/ continued:

Chevron; Cities Service Oil Co.; Conoco, Inc.; Exxon Corporation; Gulf Oil Corp.; Hamilton Bros. Oil Co.; Koniag, Inc.; Murphy Oil; Nana Regional Corp.; Phillips Petroleum Corporation; Rowan Drilling Company; Sealaska Corp.; Shell Oil Co.; Sohio Natural Resources; Texas Gulf; and Union Oil Company.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 746 F.2d 570. The rationale for the decision was set forth in a companion case entitled People of Village of Gambell v. Clark, reported at 746 F.2d 572 (9th Cir. 1984). The opinion of the District Court for the District of Alaska is reported at 548 F. Supp. 182 (1982). The foregoing decisions appear as Appendices A, B and C to this Petition.

JURISDICTION

The decision of the Court of Appeals was entered on November 2, 1984. The Court of Appeals granted appellants until December 14, 1984, to file a petition for rehearing and suggestion for rehearing en banc. A timely petition for rehearing was filed. An order denying the petition

for rehearing was entered on February 5, 1985, and is included as Appendix D to this Petition. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

43 U.S.C § 1603 provides as follows:

> (a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.
>
> (b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.
>
> (c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based

on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extingushed.

16 U.S.C. § 3102(3) provides:

> The term "public lands" means land situated in Alaska which, after December 2, 1980, are Federal lands, except --
>
> (a) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;
>
> (b) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.] which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and
>
> (c) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1618(b)].

16 U.S.C. § 3120(a) provides, in part:

> In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

STATEMENT OF THE CASE

This case involves the rights of Inupiat Eskimos in the ice fields and waters of the Arctic Ocean. For centuries the Inupiats have made continuous, extensive and exclusive use of the North Slope of Alaska and adjacent marine areas. Their occupancy of territory outside the State of Alaska, but subject to

United States jurisdiction and control, gives rise to aboriginal rights under federal law which have never been extinguished. The Inupiat Petitioners initiated this action to prevent outside oil developers from interfering with their occupancy of the sea-ice. Such interference both violates the Inupiats' aboriginal rights and threatens the destruction of the Inupiats as a people.

The Court of Appeals acknowledged as unique and undisputed the factual basis for the Inupiats' claim:

> Factually, no aboriginal group has ever used water and ice as intensely as have the Eskimos. For about half the year, water up to 65 miles from the Arctic coast is frozen solid. The resulting ice areas resemble the tundra, and during this period the Eskimos treat the ice as a mere extension of the land. They set up camps on the ice. They build roads on it. And, most importantly, they hunt and fish on it. R. Nelson, Hunters of the Northern Ice (1969) . . . . Eskimos have relied on the sea to provide them with most

> of their necessities. They have relied on the oceans to provide them with food, clothing, fuel, and the basic material for making hunting equipment such as kayaks and harpoons. Id; N. Chance, The Eskimo of North Alaska 9 (1966).
>
> Because ice areas are not physically different from land during long periods of the year, and because Eskimos have generally relied on the oceans for most of their food, fuel, and clothing, they have not traditionally recognized sharp distinctions between land and water. Simply stated, the sea is so central to the life of an Eskimo that s/he recognizes no distinctions between the two. K. Josephson, Alaska and the Law of the Sea: Use of the Sea by Alaska Natives -- A Historical Perspective, 91 (1974).

Village of Gambell at 576. The Inupiat occupation of the sea ice and the rights which flow therefrom are not based on a technical or fictitious presence of any sort.

This lawsuit was brought in response to the 1979 Federal/State Joint Beaufort Sea Outer Continental Shelf (OCS) Sale. An Environmental Impact Statement (EIS)

covering the sale contains admissions that noise, oil spillage, traffic and human activity associated with oil and gas development on the OCS can be expected to have grave impacts upon Inupiat sea-ice use areas more than three miles from the coastline.

The threat to Inupiat survival from OCS development has since increased many fold. There have since been two major 5-year OCS leasing schedules contemplating at least eleven major federal lease sales off northern and western Alaska. An EIS relating to just one sale admits that "[d]isturbance of key species and use areas which the villages of Barrow, Nuiqsut and Kaktovik use for subsistence is very likely." The EIS authors expect that the sale "could have severe effects on the viability of the Inupiat people over time," and may jeopardize the "con-

tinued existence" of the bowhead whale, upon which the Inupiats depend.2/ Thus, the Inupiats are concerned not for abstract legal rights but for their continued physical existence.

The District Court, exercising jurisdiction over the case pursuant to 28 U.S.C. § 1331, granted judgment on the pleadings to the defendants, ruling as a matter of law that aboriginal rights cannot be recognized in ocean areas -- even though such areas are subject to Federal jurisdiction and control. This holding represented an extraordinary departure from principles of Federal Indian law. For almost two centuries, this Court has held that the Indian "right of occupancy"

2/ Bureau of Land Management, Diapir Field Final EIS, OCS Proposed Oil and Gas Lease Sale 71 (May 1982) at E-17, 136.

will be recognized and protected as the United States extends its jurisdiction and control to new areas. The District Court created a broad and unprincipled exception to this doctrine.

The Court of Appeals affirmed on a different ground, giving its reasoning in the companion case of People of the Village of Gambell v. Clark (Village of Gambell), 746 F.2d 572 (9th Cir. 1984).3/ The court held that § 4(b) of the Alaska Native Claims Settlement Act ["ANCSA"], 43 U.S.C. § 1603(b), which ex-

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3/ The court was apparently unwilling to affirm the District Court's ruling that aboriginal rights are not recognized in ocean areas. Without qualification as to ocean areas, the Court of Appeals stated that "[a]boriginal title or right is a right of exclusive use or occupancy held by Natives in lands and waters used by them and their ancestors prior to the assertion of sovereignty over such areas by the United States." Village of Gambell at 574 (emphasis added).

tinguishes aboriginal rights "in Alaska," also extinguishes aboriginal rights outside Alaska. In reaching this incredible result, the Court of Appeals, like the District Court, failed to heed this Court's repeated admonitions that a Native people's aboriginal rights are secured by Federal law. And, it refused to apply the rules of construction that this Court has held must be applied to a statute affecting Native rights.

The Ninth Circuit's in-Alaska-means-outside-Alaska holding is all the more incredible in light of the history of the Village of Gambell case. There, plaintiffs argued that in holding the 1983 Norton Sound OCS Sale, the Secretary violated the subsistence provisions of the Alaska National Interest Lands Conservation Act ("ANILCA"), 16 U.S.C. §§ 3101-3126. Like ANCSA, ANILCA is

applicable to lands and waters "in Alaska." 16 U.S.C. § 3102.

On a motion for a preliminary injunction, Judge Fitzgerald found that the Village of Gambell plaintiffs did not have a strong likelihood of success in establishing that "public lands in Alaska" included areas outside Alaska. Order (March 14, 1983) at 7, included as Appendix E to this Petition. On motions for summary judgment, Judge von der Heydt ruled that "in Alaska" was limited to areas within State boundaries, and rejected plaintiffs' efforts to "manufacture an ambiguity":

> To determine the meaning of "public lands" the court need merely look to the definitional section of Title I of ANILCA . . . Public lands means "land situated in Alaska" to which the United States holds title. § 102(3) of ANILCA (emphasis added). The court believes the plain meaning of this phrase is clear and rejects plaintiffs' attempts to manufacture an ambiguity. The court has also

> reviewed the legislative history and further concludes there is no persuasive evidence that Congress intended the phrase "public lands", as used in § 810(a), should include offshore lands and waters outside the territorial boundaries of Alaska. It is significant to the court that Congress did not mention the Outer Continental Shelf in deliberations concerning both § 102(3) and § 810(a).

Memorandum and Order (April 4, 1983) at 2 (emphasis added), included as Appendix F to this Petition.

Village of Gambell was consolidated with this case on appeal. Counsel for the federal and oil company defendants conceded, in briefs and oral argument to the Court of Appeals, that "in Alaska" has a clear meaning, and that the OCS is not "in Alaska."4/

4/ See, e.g., Gambell, Opposition of Appellees ARCO Alaska, Inc., et al., to Plaintiffs' Emergency Motion for Injunction Pending Appeal, at 35 (April 20, 1983); Inupiat, Brief of the Federal Appellees at 34 n.22 (April 1983).

Thus, when the Court of Appeals held that, by extinguishing aboriginal rights "in Alaska," Congress also extinguished the Inupiats' aboriginal rights outside Alaska, it overrode the concessions of the parties and the rulings of both of the District Judges for the District of Alaska. Its holding sends a green light to other courts to construe sua sponte statutes that, like ANCSA, terminate some Indian rights, in overly broad and unintended ways.

Finally, both the District Court and the Court of Appeals rejected the Inupiats' international law claims as a matter of law. To the lower courts, international law poses no obstacle to Federal action that deprives a Native people of their means of subsistance.

REASONS FOR GRANTING THE WRIT

Petitioners request certiorari because:

1. This Court has always protected Indian title and aboriginal rights from encroachment by governmental or private parties. The failure of the District Court and Court of Appeals to uphold Inupiat rights in areas where the United States has extended its jurisdiction and control is inconsistent with this Court's rulings, violates petitioners' aboriginal title and use rights, and sets dangerous new precedents. The consequences here are especially significant: this case does not involve ancient claims by the distant descendants of an Indian tribe long since assimilated into American life, but the present-day rights of an aboriginal people that, to this day, depend upon aboriginal subsistance activi-

ties in some of the most isolated and remote areas of North America.

2. This Court has always held that Native rights are not to be abrogated by implication and that statutes dealing with Indian rights must therefore be explicit as to any such abrogation. In defiance of this, the Court of Appeals held that ANCSA impliedly abrogates Inupiat rights at issue here by applying a bizarre interpretation to the term "in Alaska," reading it to mean, in effect, "outside Alaska." This departure from settled rules of decision in Indian cases threatens Indian rights nationwide and leads to absurd results.

3. The Court of Appeals' decision denies to the Inupiats essential subsistence rights secured by applicable standards of international law. The extent to which a Native people are entitled to

protection under international law of indigenous people against interference by massive industrial development is an important question of federal law which has not been, but should be, settled by this Court.

A. The Opinions Below Establish Novel and Erroneous Departures From the Law of Aboriginal Rights, Violating Principles That Have Been Established For Two Centuries.

In attempting to deal with the Inupiats' compelling factual situation, the District Court and Court of Appeals enunciated two new principles of the law of aboriginal rights. The District Court ruled that the United States will not recognize aboriginal rights in ocean areas; the Court of Appeals ruled that a statute extinguishing rights in one location should be read to extinguish rights in another.

Both propositions are manifestly erroneous. Together, the holdings below either misconstrue or contradict decisions of this Court spanning two centuries, which have shown a commitment to protecting aboriginal rights even in extraordinary circumstances.

From Chief Justice Marshall's observation in 1832, that the protection of aboriginal occupancy rights is "evidenced by our history, in every change through which we have passed," Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 544 (1832), to the Court's reminder in March 1985 that the "Indians' right of occupancy is 'as sacred as the fee simple of the whites,'" County of Oneida v. Oneida Indian Nation, ___ U.S. ____, 84 L.Ed.2d 169, 179 (March 4, 1985) (Oneida II), this Court has insisted that aboriginal rights be respected as American jurisdic-

tion is extended to new areas.

> From the first Indian claims presented, this Court recognized the aboriginal rights of the Indians to their lands. The Court spoke of the "unquestioned right" of the Indians to the exclusive possession of their lands, and stated that the Indians' right of occupancy is "as sacred as the fee simple of the whites." This principle has been reaffirmed consistently. Thus, as we concluded in Oneida I, "the possessory right claimed [by the Oneidas] is a federal right to the lands at issue in this case."

Id. (citations omitted) (emphasis in original).

In this context, the Court has stated that its decisions "emphasize 'Congress' unique obligation toward the Indians.'" Id. at 191; Morton v. Mancari, 417 U.S. 535, 555 (1974). In Oneida II, the Court held that the tribal rights at stake were valid and enforceable notwithstanding a 175-year delay in the commencement of the tribe's claim. Irrespective of the unusual facts of that

case, and the potentially dramatic consequences it raised for land titles in New York state, the Court could find no relevant legal basis for holding the Oneidas' claims barred.

Here, the unusual setting of the Inupiats' aboriginal domain has led the lower courts to repudiate Inupiat aboriginal rights, without any bona fide legal basis for doing so. The District Court's holding that the United States does not recognize aboriginal rights in ocean areas, and the Court of Appeals' holding that such rights can in any event be extinguished by implication, are frontal assaults on the doctrine of aboriginal rights. As we show below, they are totally without merit, and should be reviewed by this Court.

B. The District Court's Holding That the United States Does Not Recognize Aboriginal Rights in Ocean Areas Distorts the Law of Aboriginal Rights and Misapplies this Court's Original-Jurisdiction Cases on the Status of Ocean Lands.

The nature and scope of Native aboriginal rights is governed by several well-defined principles, which have been established since "the time of the Revolutionary War." Oneida II, 84 L.Ed.2d at 178. First, and foremost, aboriginal rights do not arise from treaties or statutes, but from the provable facts of aboriginal use and occupancy. United States v. Santa Fe Pacific R.R. Co., 314 U.S. 339, 345 (1941); Kramer v. United States, 261 U.S. 219, 229 (1923). The Court has emphasized that the Native use and occupancy entitled to legal protection is to be determined with reference to the way of life, habits, customs and

usages of the Natives, and not by Anglo-American property concepts. Mitchel v. United States, 34 U.S. (9 Pet.) 711 (1835).

As a result, aboriginal rights have been recognized or acknowledged, by treaty or otherwise, both with respect to inland waters5/ and in ocean waters.6/ Congress has also repeatedly acknowledged its duty to protect Native rights in ocean areas in a variety of contexts.

5/ Worcester v. Georgia, 31 U.S. (6 Pet. 515 (1832); Oneida Tribe of Indians of Wisconsin v. United States, 165 Ct. Cl. 487 (1964), cert. denied, 379 U.S. 946; United States v. Michigan, 471 F. Supp. 192 (W.D. Mich. 1979), remanded on other grounds, 623 F.2d 448 (6th Cir. 1980), decree modified, 653 F.2d 277 (6th Cir. 1981), cert. denied, 454 U.S. 1124 (1981).

6/ Alaska Pacific Fisheries v. United States, 248 U.S. 78 (1918); Metlakatla Indian Community v. Egan, 369 U.S. 45 (1962); Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658 (1979).

See, e.g., Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1407; Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-82; Endangered Species Act, 16 U.S.C. §§ 1531-42.

Recognition of fundamental Native rights and interests in offshore areas, including rights secured by treaty, continues to be the acknowledged policy of the United States. See, for example, Treaty with Canada Concerning Pacific Salmon, done Jan. 28, 1985, T.I.A.S. No. ____, art. XI; Pacific Salmon Treaty Act of 1985, Pub. L. No. 99-5, 99 Stat. 7 §§ 2(H), 3(a), 3(c)(4), 3(e)(3) and 4(b). See also Kaiser Aetna v. United States, 444 U.S. 164 (1979); Carter v. Hawaii, 200 U.S. 255 (1906); Damon v. Hawaii, 194 U.S. 154 (1904), in which the Supreme Court upheld extensive private rights in ocean waters and navigable ponds despite

the absence of such rights at common law. Carter and Damon, in particular, were heavily relied upon by the Interior Solicitor in his decision in Aboriginal Fishing Rights in Alaska, 57 Int. Dec. 461 (1942), in which he held that the extent of Native rights in offshore areas had to be determined with reference to the facts of Native use and occupancy.

The District Court ruled that federal paramountcy in ocean areas, as determined by a line of this Court's original-jurisdiction cases beginning with United States v. California, 332 U.S. 19 (1947), was inconsistent with Inupiat rights in the same area. The opposite is true. Aboriginal rights as a doctrine presumes federal paramountcy, and aboriginal rights in an area become secured under federal law when federal jurisdiction extends to cover territory

occupied by Natives.

Congress has acted consistently with this understanding, even when extending federal jurisdiction into marine areas. In 1953, it enacted the Submerged Lands Act and the Outer Continental Shelf Lands Act. 43 U.S.C. §§ 1301 et seq.; 43 U.S.C. §§ 1331 et seq. The latter asserted federal jurisdiction and control over submerged lands beyond state boundaries. A House Report makes it clear that Congress did not believe that the federal government's paramount powers, under California and its progeny, by itself defeated valid pre-existing rights.

> [The Act] asserts Federal jurisdiction and control over the Continental Shelf areas beyond original State boundaries, thus bringing the land and resources within such areas into the same legal status as those acquired by the United States through cession or annexation; in the alternative, such lands and resources are subject to the doctrine of discovery. Adherence to the

> policy heretofore observed in connection with similar lands and resources brought under national dominion requires as a matter of policy and law, that the property rights of individuals in and to such lands and resources be recognized and confirmed.

H. Rep. No. 215, 83d Cong., 1st Sess., reprinted in U.S. Code Cong. & Ad. News 1385, 1441 (1953) (emphasis added).7/

7/ Both the Submerged Lands Act and the Outer Continental Shelf Lands Act contain savings clauses which provide that: "Nothing herein contained shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this [Act] . . . ." 43 U.S.C. §§ 1315, 1342. The Senate Report on the Submerged Lands Act explained that this savings clause "follows the historic Congressional practice of exempting from the operation of statutes of this character existing third party rights, if any there be." S. Rep. No. 133, 83d Cong., 1st Sess. 21 (1953). Similarly, the Senate Report for the Outer Continental Shelf Lands Act stated: "Section 14 is a 'Savings Clause,' in that it protects any rights in the Outer Shelf area that may have been acquired prior to the effective date of the Act." S. Rep. No. 411, 83d Cong., 1st Sess. 14 (1953). And, the conference Report on the Outer

In 1976, Congress enacted the Fisheries Conservation and Management Act, 16 U.S.C. §§ 1801 et seq. That Act extended United States jurisdiction to regulate marine fisheries from the existing territorial sea to 200 miles from the coastline. The Senate Commerce Committee emphasized that the Act should not be construed to affect the fishing rights of Native Americans, whether established by treaty or any other law. S. Rep. No. 416, 94th Cong., 1st Sess. 36 (1975). Again, such Congressional action cannot be squared with the proposition that Native rights are abrogated by the mere

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Footnote 7/ continued:

Continental Shelf Lands Act stated that the savings clause was added to protect "any rights" that may have been acquired prior to the date of the Act. Conf. Rep. No. 1031, 83d Cong., 1st Sess., reprinted in U.S. Code Cong. & Ad. News 2185 (1953).

extension of United States sovereignty into ocean areas. Instead, as we have observed, the real significance of these statutes is that they trigger the federal government's duty to protect pre-existing Native rights in those areas. See Passenger Fishing Vessel, supra, 443 U.S. at 688.

Thus, the District Court fundamentally misperceived the juridical regime applicable in ocean areas. It has distorted this Court's original-jurisdiction cases, reading them to create a brick wall at the ocean's edge, beyond which basic principles of American law, recognized since the Revolutionary War, cannot apply. As this Nation increasingly asserts its sovereignty in ocean areas8/,

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8/ See, e.g., Exec. Proc. 5030, 48 Fed. Reg. 10605 (Mar. 10, 1983), proclaiming a 200-mile Exclusive Economic

it is imperative that these fundamental errors be corrected.

C. The Court of Appeals' Opinion Authorizes Broad and Unprincipled Extensions of Statutes Abrogating Indian Rights and Is Inconsistent with the Opinions of This Court.

The rule in Indian law is that ambiguities in statutes are to be construed in favor of the Indians. This canon has been said to be "eminently sound and vital," Bryan v. Itasca County, 426 U.S. 373, 392 (1976); Northern Cheyenne Tribe v. Hollowbreast, 425 U.S. 649, 655 n.7 (1976), and was reaffirmed only weeks ago in Oneida II:

> The canons of construction applicable in Indian law are rooted in the

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Footnote 8/ continued:

Zone in which the United States has extensive "sovereign rights" and "jurisdiction."

> unique trust relationship between the United States and the Indians. Thus, it is well established that treaties should be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit. "Absent explicit statutory language," this Court accordingly has refused to find that Congress has abrogated Indian treaty rights.
>
> The Court has applied similar canons of construction in non-treaty matters. Most importantly, the Court has held that Congressional intent to extinguish Indian title must be "plain and unambiguous," and will not be "lightly implied." Relying on the strong policy of the United States "from the beginning to respect the Indian right of occupancy," the Court concluded that it "[c]ertainly" would require "plain and unambiguous action to deprive the [Indians] of the benefits of that policy."

84 L. Ed. 2d at 187 (citations omitted).

The Ninth Circuit's decision stands in blatant defiance of these principles. Here, the court began with a statute that, on its face, is clear and unambiguous: The extinguishment provisions of ANCSA apply "in Alaska," and nowhere

else. There is no "plain and unambiguous" statement that aboriginal rights outside Alaska are extinguished. Under the principles reaffirmed in Oneida II, that should have ended the matter.

The Ninth Circuit, however, combed the legislative history in order to "manufacture an ambiguity." Then, in analyzing that history, it ignored the repeated statements by congressmen, congressional committees, and key witnesses at congressional hearings, that the scope of the settlement was coextensive with the State of Alaska. Instead, it relied on an isolated comment by a private party in a 1969 hearing. On the basis of that comment, it held that Congress in 1971 extinguished aboriginal rights outside Alaska, despite the plain language of the statute.

This holding makes a mockery of this

Court's decisions and invites other courts to cast aside settled rules of statutory construction whenever Congress extinguishes some Indian rights. In that setting, the Ninth Circuit apparently believes it is free to expand the extinguishment provisions at will. It is imperative that this Court review and correct that holding.

1. There is No Ambiguity in ANCSA; By Creating One, the Court of Appeals Wreaks Havoc with Rules Defining State Boundaries, and Contravenes Basic Principles of Federal Indian Law.

By its terms, § 4(b) of ANCSA only extinguishes aboriginal rights "in Alaska." 43 U.S.C. § 1603(b). The language in the statute, which extinguishes aboriginal title in submerged lands "both inland and offshore" is qualified by specific reference to areas "in Alaska."

The Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339, § 2 (1958), provides that "[t]he State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska." Under firmly established law, "territorial waters" comprise a three-mile belt adjoining the coastline. E.g. United States v. Maine, ___ U.S. ___, 83 L.Ed.2d 998, 1005-06 (Feb. 19, 1985); United States v. California, 332 U.S. 19, 33 (1947). Section 6(m) of the Statehood Act made applicable to Alaska the Submerged Lands Act, 43 U.S.C. § 1301 et seq., which limits the seaward boundary of Alaska to "a line three geographical miles distant from its coastline." 43 U.S.C. § 1312. Thus, by referring to areas "in Alaska," Congress referred to a well-defined territory,

known to comprise approximately 375 million acres.

When Congress has intended to legislate with respect to OCS areas outside state boundaries, it has done so expressly. For example, in the Energy Policy and Conservation Act, Congress stated that "[t]he term 'United States' when used in the geographical sense means all of the States and the Outer Continental Shelf." 42 U.S.C. § 6202(5) (emphasis added). See id., § 6202(10). Conversely, in the many statutes in which it has legislated with respect to areas "in" a particular state, its intent clearly was to reach only to the boundaries of that state, and not to vast areas beyond. See, e.g., 43 U.S.C. § 391, establishing the Reclamation Fund with monies received from the sale of public lands "in . . . California, . . . Oregon [and] Washing-

ton," among other states. It has never been suggested, of course, that monies received from the sale of OCS lands bordering these states are subject to the provisions of § 391.

The term "in Alaska" is itself used in numerous sections of ANCSA in addition § 4. That "in Alaska" means exactly what it says is most clear in 43 U.S.C. §§ 1610, 1611, 1616 and 1621 (and also § 6(b) of the Statehood Act), in which rights in "public lands in Alaska" are discussed.9/ These sections provide, among other things, for land withdrawals, exchanges, and selections "in Alaska" by the State and regional corporations. Obviously it was not Congress' intention

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9/ "Public lands" are defined, in 43 U.S.C. § 1602(e), as all Federal lands and interests therein located in Alaska," with limited exceptions.

that the State and Native regional corporations might select, or acquire through exchange with the Secretary of the Interior, OCS lands outside state boundaries.

In short, there is no ambiguity here. By artificially creating one, the Ninth Circuit opinion wreaks havoc with statutes applicable "in" particular states, threatening to create absurd results. In the special context of Indian aboriginal rights, the court's manufactured ambiguity is squarely inconsistent with this Court's decisions safe-guarding such rights.

2. ANCSA's Legislative History Provides No Support for the Extraordinary Decision of the Court of Appeals.

S. 1830, 91st Cong., 1st Sess. (1969), a predecessor to ANCSA, provides direct evidence that Congress understood

that the OCS is not "in Alaska." Section 12 of S. 1830 earmarked certain mineral revenues for Alaska Natives. Subsection 12(a)(1) addressed minerals "located in all public lands in Alaska." Subsection 12(c), separately addressed minerals "from the Outer Continental Shelf bordering the State of Alaska." In drafting and introducing this bill, the Administration and the Senate Committee on Interior and Insular Affairs demonstrated a clear understanding that the OCS is not "in Alaska."

Despite this the Court of Appeals reads "in Alaska" to include, in addition to the 375 million acres within Alaska, hundreds of millions of acres comprising the OCS outside Alaska.10/ It finds am-

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10/ In debates on ANILCA, the OCS bordering Alaska was stated to comprise from 203 to 300 million acres. See 124

biguity in the phrase "in Alaska" on the basis of the definition of Norton Sound in Webster's New Geographical Dictionary and in the language and legislative history of ANILCA, which was enacted nine years after ANCSA. Village of Gambell at 575-76.

ANCSA's legislative history indicates that Congress was well aware that the geographic scope of the Act was coincident with the State. For example, the committee reports repeatedly characterize the subject of ANCSA as Native claims "to the lands which now comprise the State of Alaska." Notably, this characterization is found in the Senate committee reports

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Footnote 10/ continued:

Cong. Rec. S10, 106-07 (daily ed. June 29, 1979) (Sen. Stevens) (258.4 million acres), 125 Cong. Rec. 44 (1979) (Rep. Udall) (203 million acres); id. at 10,285 (Rep. Seiberling)(300 million acres).

on bills containing extinguishment provisions that in all material respects are identical to those enacted,11/ and was repeated on the floor of the Senate by Senator Jackson, the Chairman of the Committee on Interior and Insular Affairs.12/ Furthermore, key congressmen repeatedly referred to the Native claims being extinguished as claims covering "the State of Alaska," "375

11/ See S. Rep. No. 91-925, 91st Cong., 2d Sess. 46, 47 (1970) ["1970 Senate Report"]; S. Rep. No. 92-405, 92d Cong., 1st Sess. (1971), reprinted at 117 Cong. Rec. 38435, 38436 (1971). See also H.R. Rep. No. 92-523, 92d Cong., 1st Sess (1971), reprinted in [1971] U.S. Code Cong. & Ad. News 2192, 2241 ["1971 House Report"], in which Rep. John Saylor, the ranking minority member of the House Committee on Interior and Insular Affairs, stated that the Act settled claims "based on aboriginal use and occupancy of lands comprising the State of Alaska."

12/ 116 Cong. Rec. 24208 (1970); 117 Cong. Rec. at 38433 (1971).

million acres," or "land in the State"; none referred to claims covering, in addition, the vast ocean areas outside Alaska.13/

Congress' intent to settle only Native claims within the State is consistent with the underlying purpose of the Act, which was to resolve the conflict under the Statehood Act between Native claims and State land selection rights. This was a conflict that, like the

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13/ See, e.g., Hearings Before the House Subcomm. on Indian Affairs on H.R. 3100, H.R. 7039, and H.R. 7432 (1971) ["1971 House Hearings"] at 65 (Rep. Aspinall, Chairman, House Comm. on Interior and Insular Affairs; "maximum of 375 million acres"); 340 (Rep. Begich, Alaska; "375 million acres"); and 370 (Harrison Loesch, Assistant Secretary of the Interior, "the entire State of Alaska"); 117 Cong. Rec. at 36854 (Rep. Aspinall; "375 million acres," "most of the State"), 36857 (Rep. Haley; "land in the State"); 38443 (Sen. Allot; "300 million acres"); and 38445 (Sen. Harris; "nearly all of the State's 375 million acres of land").

Statehood Act, pertained exclusively to areas within the State, and did not implicate ocean areas outside State boundaries.

The Senate Committee noted that the United States would not be the

> main beneficiary from clearing title to lands in Alaska . . . To the State of Alaska, a settlement would remove the cloud which the Native Claims cast on all land titles in Alaska . . . [State selections under the Statehood Act could then] proceed, free from the threat of litigation and conflicting claims.14/

In contrast, nowhere in the voluminous legislative history is there the slightest suggestion that the federal government would benefit from ANCSA because of its interest in the OCS, although other federal benefits were noted.15/ The pur-

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14/ 1971 Senate Report at 83, 86.

15/ See, e.g., 117 Cong. Rec. at 36469 (clearing federal title to land within the State).

pose of the Act was to resolve the conflicts created by Native claims within the State, not to settle claims to vast areas outside Alaska.

The legislative history relied upon by the Court of Appeals fails to support its extraordinary expansion of the geographic scope of ANCSA. For its version of ANCSA's legislative history, the Court of Appeals relied largely on the statements in Congressional hearings by representatives of the Alaska Federation of Natives ["AFN"], the Western Oil and Gas Association ["WOGA"], the State of Alaska, and the National Wildlife Federation ["NWF"]. Village of Gambell at 578. It did not cite the statement of a single congressman or congressional committee indicating that ANCSA would be applied outside state boundaries. The consistent focus of the statements it did cite was

the inclusion in ANCSA's extinguishment provisions of waters, submerged lands, and hunting and fishing rights within state boundaries, not the extension of the Act to vast areas outside Alaska.

AFN representatives, for example, clearly understood the Act to apply only within the state. The following statements are illustrative:

> By its actions on these bills Congress will extinguish our valid land rights in approximately 375 million acres of land in Alaska . . . Fundamentally these bills are in many respects quite similar. All of them would extinguish our land rights throughout the State of Alaska.
>
> AFN believes a settlement extinguishing the property rights of the Natives to substantially the entire State of Alaska must recognize that different groups of Alaska Natives have property rights in different lands aboriginally used and occupied by them.
>
> We are not asking for anything. We are offering the U.S. Government, 84 percent of our property. We are offering them 300 million acres to

> satisfy the needs of others in this State and to satisfy the needs of the United States in the way of Federal reserves, wildlife refuges, wilderness areas. 16/

Similarly, the State, in urging that the settlement extend to "lands, waters, and submerged areas in Alaska,"17/ gave no indication that it should encompass areas outside the state. Nor did NWF argue for a geographic enlargement of the Act. Even the WOGA statements are far from clear on this point. While its statements in the course of the 1969 hearings do contain passing references to the OCS, no such references are found in

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16/ 1971 House Hearings at 181; Hearings Before the Senate Comm. on Interior and Insular Affairs, 92d Cong., 1st Sess. (1971) ["1971 Senate Hearings"] at 353, 475 (emphasis added).

17/ Hearing Before the Senate Comm. on Interior and Insular Affairs on S. 1830, 91st Cong., 1st Sess. (1969) at 234.

its subsequent statements.18/

The Court of Appeals also suggested that "Congress could not have been unaware of such widely known facts of Native Alaskan life," referring to Eskimo use and occupancy of ocean areas far outside State boundaries. Village of Gambell at 576. Yet to document such facts the panel turned to materials that were published after the enactment of

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18/ For example, with respect to H.R. 3100, which extinguished claims of "aboriginal title in Alaska . . . including any aboriginal hunting and fishing rights that may exist" and claims "based on . . . use or occupany of land or water areas in Alaska," WOGA said:

> The Declaration of Settlement contained in section 3 of H.R. 3100 is complete and comprehensive, and we have no changes to suggest in it. In particular, section 3 extinguishes claims to water, as well as land, which is needed because some of the claims are asserted for water areas.

1971 House Hearings at 2, 353.

ANCSA, such as the 1982 Norton Sound EIS. Id. at 576-77. The scant testimony it cites from the ANCSA hearings, does not identify whether the areas being discussed were inside or outside the three-mile expanse of coastal waters.

Finally, the Court of Appeals observed that "the needs of Natives for subsistence hunting and fishing were considered in determining the amount of land granted the Natives . . . ; the land was granted, in part, 'in lieu of subsistence hunting and fishing rights' . . . . " Village of Gambell at 576. Yet it is clear that no provision in ANCSA -- including the Native land grants -- provides even the remotest protection for Inupiat subsistence activities in the areas at issue in this case. The total absence of such protection simply confirms that these areas are not within the

scope of ANCSA.19/

Thus, on the basis of a passing reference by a private party in a 1969 hearing, the Court of Appeals held that, when it enacted ANCSA in 1971, Congress intended it to apply to millions of acres outside Alaska. This holding contradicts the legislative history and the clear understanding of virtually everyone involved.

19/ Even in Alaska the allocation of land to the Inupiats was inadequate for subsistence purposes because it was done on the basis of population, not subsistence needs. Given the climate and geography of the North Slope, Inupiat hunters range more widely in pursuit of game than Natives from other regions. The Act's provision of comparatively small parcels to the Inupiat failed to recognize this. To now interpret ANCSA to extinguish rights outside Alaska exacerbates this disproportion between the territory granted to the Inupiat by ANCSA and the territory they need to survive.

3. The Court of Appeals' Resolution of Perceived Ambiguities Against the Natives Violates Fundamental Principles of Federal Indian Law and Sets a Dangerous Precedent of National Significance.

The Court of Appeals' opinion states that "[t]he possibility of two meanings of the phrase "in Alaska" renders the provision ambiguous, justifying reference to the legislative history." Village of Gambell at 575. While we believe that there is no such ambiguity, and that the court's legislative history analysis is incomplete and unfair, its most egregious error is its failure to acknowledge and apply the settled rule that ambiguities in statutes affecting Indians are to be construed in the Indians' favor. This departure from settled rules of decision in Indian cases sets a dangerous precedent of national significance.

The Ninth Circuit apparently believed that it could disregard these rules because ANCSA was intended to terminate some Native rights. But ANCSA is not alone in this respect. For example, commencing in 1954, Congress enacted a series of termination statutes, which abrogated certain rights of specified Indian tribes throughout the United States. See generally, F. Cohen, Handbook of Federal Indian Law, 152-80, 810-18 (1982 ed.). Even in construing these statutes, the Court adhered to the traditional rules of decision applicable in Indian cases. See, e.g., Menominee Tribe v. United States, 391 U.S. 404, 412-13 (1968) (termination of reservation held not to extinguish hunting and fishing rights). The Court of Appeals' approach to ANCSA -- that in construing a statute terminating some Native rights

there is no need to adhere to settled rules of decision in Indian cases -- thus sets the wrong precedent for construing a significant number of existing and prospective federal statutes. See Oneida II, 84 L.Ed.2d at 191 (discussing eastern land claim settlement acts).

The danger of this approach is amply illustrated by the decision in this case. If, in the light of uniform indications in the legislative history that Congress understood it was legislating with respect to the State of Alaska, the phrase "in Alaska" can be "construed" to mean "in or out of Alaska," then the pledge to "respect the Indian right of occupancy," Oneida II, 84 L. Ed. 2d at 187, has been reduced to an empty and cynical gesture.

The Ninth Circuit itself has held that statutes passed for the benefit of Indians "'must be interpreted as [the

Indians] would have understood them, ... and any doubtful expressions in them should be resolved in the Indians' favor.'" Puyallup Indian Tribe v. Port of Tacoma, 717 F.2d 1251, 1257 & n.6 (9th Cir. 1983), quoting Choctaw Nation v. Oklahoma, 397 U.S. 620, 631 (1970).20/ Statements in ANCSA's legislative his-

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20/ In United States v. Atlantic Richfield Company, 612 F.2d 1132, 1139 (9th Cir.), cert. denied, 449 U.S. 888 (1980), the Court of Appeals held that this principle "operates with less force" because the Inupiats were represented by "such illustrious counsel as former Supreme Court Justice Arthur Goldberg and former Attorney General Ramsey Clark." In fact, however, during the hearings on the Act, the Inupiats were chiefly represented by the Arctic Slope Native Association, not by the Alaska Federation of Natives, Justice Goldberg, or Attorney General Clark. Indeed, the Inupiats took positions at odds with those taken by AFN, never accepted the Settlement Act, and ultimately urged President Nixon by telegram to veto it. See 1971 House Hearings at 296-314. In any event, the issue is what the Natives understood the statute to mean, not what their lawyers may have believed.

tory, to the effect that the extinguishment of aboriginal rights should be construed broadly, Village of Gambell at 575 n.3, do not obviate this principle; those statements hardly can be said to authorize a court to enlarge the geographic scope of the Act.

This principle is particularly important here, since ANCSA was politically dependent upon acceptance by Natives for its enactment. One of the basic parameters of such acceptance was that the Act was applicable within the State. The Native arguments on compensation were consistently based on the scope of the claims they were relinquishing, and those claims were consistently characterized as comprising areas within the State. For example, an Inupiat representative testified:

> [A]nything less than 60 million acres for the entire statewide set-

> tlement is an act of dishonor. That amount of land is about 16 percent of the total State. It seems to us that when the United States takes our land, the retention of anything less than 16 percent certainly qualifies as an act of dishonor.21/

To judicially extend the Act to vast ocean areas outside the State, 13 years after its enactment, is indefensible. It is precisely this kind of "construction" that the principle that doubtful expressions be resolved in the Indians' favor was designed to avoid.

D. The United States May Not Lawfully Deprive the Inupiat People of the Means to Subsist.

Deprivation of a people's means of subsistence is illegal under binding principles of international law. Petitioners alleged below, and defendants

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21/ 1971 House Hearings at 246 (statement of Joseph Upicksoun, President, Arctic Slope Native Association).

either admitted or did not dispute, that oil development activities outside Alaska threaten the cultural and physical extermination of the Inupiat people.

The Court of Appeals avoided this issue by reducing a Native people's subsistence rights to, at most, procedural niceties. Village of Gambell at 582. But, the right to subsistence at international law is substantive, not simply procedural. The International Covenant on Civil and Political Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16 at 49), U.N. Doc. A/6316 (1966), guarantees in Article I as follows:

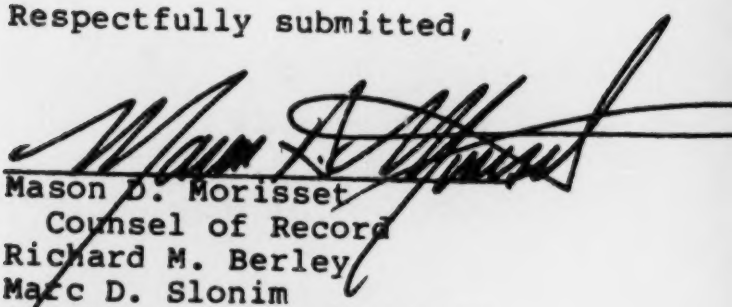
> In no case may a people be deprived of its own means of subsistence.

The Covenant, passed unanimously in the United Nations and signed on behalf of the United States in 1977, is valid as evidence that the right of a people to

continue to subsist is now a part of the law of nations, which in turn, "forms an integral part of the common law." See Filartiga v. Pena-Irala, 630 F.2d 876, 884, 886 (2d Cir. 1980), in which the Covenant was used as evidence of current usage and practice of international law.

The United States claims it may take action which it admits threatens the "viability of the Inupiat people over time." The Court of Appeals' embracing of this proposition should be reviewed. A domestic court can apply legal principles from the law of human rights to determine the limits of government action. Filartiga, 630 F.2d at 884-85; The Paquete Habana, 175 U.S. 677 (1900). This requires at a minimum a holding that federal action which knowingly furthers the extinction of a Native people is unlawful.

Respectfully submitted,



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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INUPIAT COMMUNITY OF THE ARTIC SLOPE and UKPEAGVIK INUPIAT CORPORATION, et al., Plaintiffs-Appellants,	)	FILED NOV 2 1984 D.C. No. CV A-81-019JMF
v.	)	No. 82-3678
UNITED STATES OF AMERICA, et al., Defendants-Appellees.	)	OPINION

Appeal from the United States District Court for the District of Alaska James M. Fitzgerald, District Judge, Presiding.
Argued and Submitted October 7, 1983

Before: BROWNING, Chief Judge, HUG, Circuit Judge, and REED*, District Judge.

PER CURIAM:

Appellants, members of the Inupiat Community of the Artic Slope, sued to enjoin oil development off the North Slope of Alaska in the Beaufort and

*Honorable Edward C.Reed, Jr., United States District Judge for the District of Nevada, sitting by designation.

Chukchi Seas.

Appellants rest their suit primarily upon a claim of aboriginal title based upon centuries of occupancy and use of sea ice many miles from shore for subsistence hunting and fishing.

For reasons stated in People of the Village of Gambell v. Clark, Nos. 83-3735x, 83-3781 (9th Cir., July , 1984), argued and decided with this case, we hold that any aboriginal rights appellants may have had were extinguished by the Alaska Native Claims Settlement Act, 43 U.S.C. SS 1601-1626.

We agree with the district court (Inupiat Community of the Arctic Slope v. United States, 548 F. Supp. 182, 188 (D. Alaska 1982)), that appellants' general trust claims are barred by collateral estoppel. See North Slope Borough v. Andrus, 642 F. 2d 589, 611-13

(D.C. Cir. 1980). See also California v. Watt, 668 F. 2d 1290, 1324-25 (D.C. Cir. 1981).

We also reject appellants' claim based upon the Final Act, Conference on Security and Cooperation in Europe, Helsinki, reprinted in 73 U.S. Dept. State Bull. 323 (1975) and the International Covenant on Civil and Political Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966). Assuming these international understandings are applicable, appellants point to no provision of either that could be interpreted as imposing upon the United States a greater obligation to protect the subsistance culture of the Natives than that imposed upon the United States by federal domestic law--an obligation already satisfied. See North Slope

Borough v. Andrus, supra. Nor have appellants made any showing of a universal recognition of such a greater obligation that would be necessary to establish a claim based on the law of nations. See Filartiga v. Pena-Irala, 630 F.2d 876, 881-84 (2d Cir. 1980).

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE PEOPLE OF THE VILLAGE OF GAMBELL, an Alaskan Native IRA Association, and THE PEOPLE OF THE VILLAGE OF STEBBINS, an Alaskan Native IRA Association,	FILED NOV 2 1984
Plaintiffs-Appellants,	
v.	Nos. 83-3735X 83-3781
WILLIAM CLARK*, Secretary of the Interior and the UNITED STATES DEPARTMENT OF INTERIOR,	D.C. No. 83-003
Defendants-Appellees.	
and	OPINION
ARCO ALASKA, INC., et al.,	
Defendants-Appellees.	

Appeal from the United States District Court for the District of Alaska

*William Clark is substituted for James G. Watt as Secretary of the Interior pursuant to Fed. R. App. P. 43(c).

James A. von der Heydt, District Judge, Presiding
Argued and Submitted October 7,1983

Before: BROWNING, Chief Judge, HUG, Circuit Judge, and REED*, District Judge.

BROWNING, CHIEF JUDGE:

The appellee Secretary of Interior offered to sell leases for about 2.4 million acres of land in the Norton Sound Basin off the western shore of Alaska for oil and gas exploration under the Outer Continental Shelf Lands Act, 43 U.S.C. SS 1331-1356. Appellee oil companies submitted bids for these leases. Appellants, the People of the Village of Gambell and the People of the Village of Stebbins (Alaska Native

*Honorable Edward C. Reed, Jr., United States District Judge, District of Nevada, sitting by designation.

Indian Reorganization Act Associations composed of residents of two towns on Norton Sound) brought this action to enjoin the sale. The district court denied appellants' motion for preliminary injunction and granted the Secretary's motion for summary judgment. This appeal followed.

Appellants argue that oil and gas development without their consent is barred because it will adversely affect their aboriginal right to subsistence hunting and fishing. Alternatively, they contend the lease sale failed to satisfy the procedural requirments of section 810 of the Alaska National Interest Lands Conservation Act (Conversation Act), 16 U.S.C. S 3120, providing special protections for subsistence uses in Alaska.

The district court held that neither appellants' aboriginal hunting and fishing right nor section 810 of the Conservation Act extend to waters over the outer continental shelf outside the territorial boundaries of the State of Alaska.

We hold that if appellants had an exclusive aboriginal right to hunt and fish in offshore areas adjacent to Alaska, that right was extinguished by the Alaska Native Claims Settlement Act (Claims Settlement Act), 43 U.S.C. SS 1601-1628.[1/] We further hold, however, that section 810 of the Conservation Act does apply to outer continental shelf waters in Norton Sound, and remand to the district court for determination of the proper remedy.

Appellants argue that oil and gas exploration and development in Norton Sound conflicts with their asserted aboriginal right to hunt and fish in these waters and concomitant right to the minerals of the outer continental shelf underlying the Sound.

Aboriginal title or right is a right of exclusive use and occupancy held by Natives in lands and waters used by them and their ancestors prior to the assertion of sovereignty over such areas by the United States. These rights are superior to those of third parties, including the states, but are subject to the paramount powers of Congress. See Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 667-69 (1974);

United States v. Santa Fe Pacific R.R., 314 U.S. 339, 345 (1941). Aboriginal rights based on occupation and use are entitled to the protection of federal law even when they are not formally recognized as ownership by treaty or statute, Sante Fe, 314 U.S. at 347, but such unrecognized aboriginal rights can be extinguished by Congress without compensation. See Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 279-85, 288-89 (1955); United States v, Dann, 706 F.2d 919, 922 n.1 (9th Cir. 1983), cert. granted, ___ U.S._, 104 S. Ct. 2693 (1984); Wahkiakum Band v. Bateman, 655 F. 2d 176,180 (9th Cir. 1981); United States v. Atlantic Richfield Co. 612 F. 2d 1132, 1134 (9th Cir. 1980) Congress's intention to extinguish must be clear; it will not be

lightly implied. See United States v. Santa Fe Pacific R.R. Co., 314 U.S. 339, 354 (1941); United States v. Dann, 706 F.2d at 928-29; United States v. Gemmill, 535 F.2d 1145, 1147 (9th Cir. 1976).

Appellees argue the Claims Settlement Act extinguished whatever aboriginal rights the Natives may have held in Norton Sound. The Claims Settlement Act arose out of a series of events beginning with passage of the Alaska Statehood Act in 1958. When Alaska became a state, nearly all its territory was federal land. The Statehood Act granted the new state the right to select over 100 million acres for state ownership. However, the state agreed by section 4 of the act to "disclaim all right and title . . . to any lands or other property (including fishing rights) [of Alaska Natives] . . ."

Pub. L. 85-508, 72 Stat. 339, 339 (1958). The state selected large areas of federal land and made application for patents for the land. The Natives claimed aboriginal title to much of the same territory. The discovery of oil on the North Slope in the 1960's exacerbated this conflict. These conflicting claims hindered both development and protection of Native and national interests in Alaska. In 1966 Secretary of Interior Stewart Udall "froze" all public land transactions in Alaska pending resolution of the conflicting claims. In 1971 Congress passed the Claims Settlement Act in an effort to accommodate in a rational manner the interests of the state, Native groups, conservationists, and potential developers, including the oil companies. See generally, H.R. Rep. No.

1045, 95th Cong., 2d Sess., pt. I at 188-889 (1978); S. Rep. No. 405, 92d Cong., 1st Sess., pt. I at 71-78 (1971).

The heart of the Claims Settlement Act was the extinguishment of Native claims based o aboriginal right in return for a grant to the Natives of $962,500,000 and 40,000,000 acres of land. United States v. Atlantic Richfield, 612 F.2d 1132, 1134 (9th Cir. 1980). Unquestionably it was the purpose of the Claims Settlement Act to extinguish the aboriginal claims of Alaska Natives.[2/] The question is whether the extinguishment provision applies to lands on the outer continental shelf adjacent to the Alaskan land mass and to waters over such lands.

Our inquiry begins with the statutory language. The critical

language is found in Section 4(b) of the Act, 43 U.S.C. S 1603(b):

> All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished. (emphasis added).

The statute also states: "there is an immediate need for a fair and just settlement of all claims by Natives... based on aboriginal land claims," and "the settlement should be accomplished rapidly, with certainty, [and]... without litigation . . ." 43 U.S.C. S 1601(a),(b).

The argument that aboriginal title in outer continental shelf lands and

waters is not extinguished rests entirely upon use in section 4(b) of the phrase "in Alaska" to identify the location of the titles and claims of title to be extinguished.

We believe Congress used the phrase "in Alaska" in this context to mean the geographic region, including the contiguous continental shelf and the waters above it, and not merely the area within the strict legal boundaries of the State of Alaska. This is not an uncommon usage. Indeed, the Norton Sound, at issue here, is described in Webster's New Geographical Dictionary (1972 ed.) as a "large inlet of NE Bering Sea, in W Alaska . . . . " (emphasis added). As indicated in Part II of this opinion, nine years later, when Congress adopted the Alaska National Interest Lands Conservation Act, 16 U.S.C. SS 3101-3233

(Conservation Act), to complete the land allocation process initiated by the Statehood and Claims Settlement Acts, Congress used the words "in Alaska" to refer to areas of the outer continental shelf. Section 1001 of the Conservation Act, 16 U.S.C. S 3141, refers to "all Federal lands (other than submerged lands on the Outer Continental Shelf) in Alaska . . . ." during debates on the Conservation Act, the phrase "in Alaska" was used on numerous occasions to include the outer continental shelf. See e.g., 125 Cong. Rec. 9900, 11,128 (1979) (statements of Rep. Udall); id. at 9907 (statement of Rep. Young).

The possibility of two meanings of the phrase "in Alaska" renders the provision ambiguous, justifying reference to the legislative history. That history makes it clear that Congress intended to extinguish

aboriginal fishing and hunting rights in outer continental shelf waters contiguous to the State of Alaska.

Congress repeatedly enjoined those who were to implement the statute to interpret the extinguishment section broadly to accomplish a complete and final settlement of aboriginal claims and avoid further litigation of such claims. 3/ Claims of aboriginal title offshore, were expressly included in the extinguishment provision, as were "any aboriginal hunting or fishing rights." The needs of the Natives for subsistence hunting and fishing were considered in determining the amount of land granted the Natives, see, e.g., H.R. Rep. No. 523, 92nd Cong., 1st Sess. 5, reprinted in 1971 U.S. Code Cong. & Ad. News 2192, 2195; the land was granted, in part, "in

lieu fo subsistence hunting and fishing rights," 117 Cong. Rec. 36864 (1971) (Rep. McClure).[4/]

Appellants' claim of aboriginal title rests upon immemorial use for hunting and fishing extending far to sea. They assert:

> Factually, no aboriginal group has ever used water and ice as intensely as have the Eskimos. For about half the year, water up to 65 miles from the Artic coast is frozen solid. The resulting ice areas resemble the tundra, and during this period the Eskimos treat the ice as a mere extension of the They set up camps on the ice. They build roads on it. And most importantly, they hunt and fish on it. R. Nelson, Hunters of the Northern Ice (1969) . . . . Eskimos have relied on the sea to provide them with food, clothing, fuel, and the basic material for making hunting equipment such as kayaks and harpoons. Id.; N. Chance, The Eskimo of North Alaska , (1966).
>
> Because ice areas are not

> physically different from land during long periods of the year, and because Eskimos have generally relied on the oceans for most of their food, fuel, and clothing, they have not traditionally recognized sharp distinctions between land and water. Simply stated, the sea is so central to the life of an Eskimo that s/he recognizes no distinctions between the two . . . . K. Josephson, Alaska and the Law of the Sea: Use of the Sea by Alaska Natives -- A Historical Perspective, 91 (1974).

Appellants' Opening Brief 27-8. Appellees do not dispute this assertion.

The Final Environmental Impact (FEIS) for the Norton Sound lease sale describes the subsistence way of life as a "continuation of traditional patterns continuous for several centuries." United States Department of Interior, Final Environmental Impact Statement, OCS Proposed Oil & Gas Lease Sale Norton Sound 47 (1982). See also id. at xii (subsistence activities

"passed on through countless generations"). The Natives' dependence on hunting, whaling, and fishing extending 20-30 miles off shore is described in detail for each of the affected villages. Id. at 47-53 & Graphics 2A, 2B, 2C.

Congress could not have been unaware of such widely known facts of Native Alaskan life and appellants do not argue to the contrary. Mr. Eben Hopson, a witness from Point Barrow, Alaska, reminded the Senate Interior and Insular Affairs Committee: "As far as hunting on the sea is concerned that is continually being used on a year around basis by the Eskimo people, and the same holds true wherever you find an Eskimo village along the coast." Alaska Native Land Claims: Hearings on S. 1830 Before Senate Comm. on Interior and Insular

Affairs, 1st Cong., 1st Sess., pt.II at 335 (1969) [hereinafter Senate Hearings 1969].

Aboriginal fishing and hunting rights are precisely the kind of rights Congress wished to extinguish such rights in ocean waters within three miles of land but preserve them in the waters beyond. On the contrary, the only directly pertinent legislative material strongly suggests Congress intended to extinguish aboriginal fishing rights in outer continental shelf waters as well.

Early versions of the Act contained no reference to either offshore lands or fishing and hunting rights. See S. 2906, 90th Cong. 2d Sess. S 501 (1968) (extinguishing "all claims against the United States based upon aboriginal right, title, use, or occupancy of lands

in Alaska . . . ."); S. 1830, 91st Cong., 1st Sess. S 3(a) (1969) (similar language). During Senate hearings in 1969 John Pickering, representative of the Western Oil and Gas Association, pointed out that some of the Native claims "purport to cover waters in addition to land areas" and "to effectuate a complete settlement, the claims should be extinguished as to water, as well as to land, areas." Mr. Pickering suggested this was true "for submerged areas beneath navigable waters in particular," and identified these as including "submerged areas beneath navigable waters [title over which was vested] in the State of Alaska under the grant made to it by the Submerged Lands Act (67 Stat. 462)." See Senate Hearings 1969, supra, pt. I at 140, 144, 149 (emphasis added). "In view of this,

Mr. Pickering stated, "it would be unfortunate if the legislation overlooked settling the Native claims to waters and thereby left open the possibility that such claims might be asserted to water areas in the future." See Id. at 144. To include such areas, Mr. Pickering suggested the extinguishment provision be amended to apply to claims based on use or occupancy not only of lands but also of "waters, and submerged areas in Alaska." See id. at 149. The State of Alaska recommended the same language. See id., pt, II at 241. The present language of Section 4 ("including submerged lands underneath all water areas both inland and offshore") was inserted in Senate bills following this hearing.

These events strongly suggest that

the reference to " submerged land" was intended to include lands on the outer continental shelf contiguous to Alaska, and that the general reference to Alaska (as distinguished from the State of Alaska) was not regarded as confining the reach of the extinguishment provision to the three-mile limit.

The express reference in Section 4 (b) to "aboriginal hunting or fishing rights" probably also had its genesis in the hearings before the 91st Congress. Arthur J. Goldberg, former Justice of the Supreme Court, appeared before the Senate Committee on behalf of the Alaska Federation of Natives, principal representative of the Natives before Congress. Senator Stevens of Alaska asked Mr. Goldberg whether the Natives agreed that aboriginal fishing and hunting rights should be extinguished.

After a rather confusing exhange, Senator Stevens said:

> [We are talking about a bill to settle the property claims of the Alaska Native people, not just the land claims, a bill to settle the property rights, including land, and I hope that this bill will be viewed in that manner because I would not want to have to come back here a few years from now and try to fet a bill to settle the nonland property claims.

Senate Hearings 1969, supra, pt. II at 299-301. Mr. Goldberg replied:

> The position that the Natives have taken is that they are prepared for an extinguishment of anything that is based upon aboriginal title.

Id. at 301. The Alaska Federation of Natives further clarified Mr. Goldberg's response in a supplemental statement which agreed that the settlement should extend to all claims "founded upon aboriginal title or use and occupancy of lands, including claims relative to fishing rights . . . ." Id.

During these same hearings, the National Wildlife Federation suggested the bill be strengthened by adding "including any aboriginal hunting or fishing rights that may exist" to the extinguishment provison. Id. at 526. This phrase was added without change to the Senate bill and eventually included in the version of the act adopted by Congress.

These witnesses presented similar testimony before the House Subcommitte on Indian Affairs of the Committee on Interior and Insular Affairs. The representatives of the Alaska Federation of Natives (AFN) reiterated their view that the act should be a "full and final extinguishment of any and all claims against the United States based upon aboriginal right . . . ." See House Hearings 1969, Pt. I, supra, at 52. See

also id. at 265-68. The Governor of the State of Alaska and the representatives of the Western Oil and Gas Association repeated their urgings that the extinguishment section address claims to waters and submerged areas. See id. at 138, 154, 310, 312-13, 318. And the National Wildlife Federation recommended to the House Committee addition of the identical phrase to cover aboriginal hunting and fishing rights that it suggested to the Senate Committee. Id. at 292.

No legislation passed the 91st Congress, but bills introduced in the 92d Congress reflected this testimony. At least one Senate bill specifically extinguished claims to offshore areas and hunting and fishing rights with language essentially identical to the present section 4(b). See S. 35, 92d

Cong., 1st Sess. S 4(a) (1971). Similar language in a House bill referred to "alleged aboriginal hunting and fishing rights that may exist." See H.R. 3100, 92d Cong., 1st Sess. S 3(b) (1971).

Only bried hearings were conducted by the House and Senate committees on these and other bills in 1971. Representatives of the Western Oil and Gas Association urged the Senate and House to approve bills with extinguishment sections referring to water, offshore areas, and hunting and fishing rights and criticized bills that failed to include specific language extinguishing such claims. See Senate Hearings 1971 supra, pt. II at 578, 581, 583; Alaska Native Land Claims: Hearings on H.R. 3100, H.R. 7039, and H.R. 7432 Before the Subcomm. on Indian Affairs of the House Comm. on

Interior and Insular Affairs, 92d Cong., 1st Sess. 353, 354, 356-57 (1971). The AFN explained before the Senate Committee that its position "on the major provisions of the settlement, as well as most of the details, remains virtually the same as it was in our prior appearances before this committee." Senate Hearings 1971, supra, pt. I at 306. The National Wildlife Federation stated again its belief that the settlement should extend to "hunting, fishing, and trapping rights." Id. at 386. See also House Hearings 1971, supra, at 342.

The Senate passed a bill containing an extinguishment section referring to offshore submerged lands and to hunting and fishing rights. Submerged offshore areas were not specifically extinguished

in the House-passed bill, but aboriginal hunting and fishing rights were. The conference committee adopted the broader and more explicit language of the Senate bill, stating the language was "in substance, the same as the language of the Senate amendment." H. Conf. Rep. No. 746, 92d Cong., 1st Sess. 40, reprinted in 1971 U.S. Code Cong. & Ad. News, 2247, 2253.

This summary of the history of section 4(b) demonstrates that Congress chose to adopt broad language to extinguish all claims made by Alaska Natives based upon aboriginal right, specifically including claims to hunting and fishing rights in offshore waters above the outer continental shelf.

Based upon the language of section 4(b) of the Claims Settlement Act, taken as a whole, the mandate from Congress to

construe the provision broadly to extinguish all aboriginal claims, and the legislative history indicating a specific prupose to extinguish aboriginal hunting and fishing rights, including those in coastal waters, and specifically in outer-continental-shelf waters, we conclude that appellants' claims to an aboriginal right to hunt and fish in Norton Sound were extinguished.

II.

We turn to appellants' contention that the lease sale failed to satisfy the procedural requirements of section 810 of the Alaska National Interest Lands Conservation Act (Conservation Act), 16 U.S.C. S 3120, a claim rejected by the district court on the ground that

this statutory provision does not apply to the outer continental shelf.

Title VIII of the Conservation Act, of which section 810 is a part, seeks to preserve the opportunity of rural residents of Alaska to take fish and wildlife for their subsistence. As one means of furthering this purpose, section 810 provides that in determining whether to lease or otherwise permit the disposition of public lands the head of the federal agency having primary jurisdiction of such lands shall evaluate the effect of the proposed action on subsistence uses. No action is to be taken which would significantly restrict subsistence uses unless the head of the agency first satisfies certain procedural conditions, including notice and hearing, and determines that the proposed restriction of subsistence

uses is necessary, that the minimal amount of "public lands" are invlolved, and that reasonable steps have been taken to minimize the adverse impact on subsistence uses.

Section 810 applies to "public lands." The term "land" is defined as "land, waters, and interests therein." Section 102(1), 16 U.S.C. S 3102(1). The term "public lands" is defined as "land situated in Alaska." Section 102(3), 16 U.S.C. S 3102(3) (emphasis added). As in the contruction of the Claims Settlement Act, the question in construing the Conservation Act is whether the limitation "in Alaska" in this definition of "public lands" excludes the outer continental shelf and its covering waters. Our conclusion is the same under both statutes: outer continental shelf lands and waters

contiguous to the State of Alaska are included.

As we have said, a geographic term such as "in Alaska" may be used in either a general or technical sense, and reference to the legislative history to resolve the ambiguity is appropriate. See Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918).

During the House debates the term "in Alaska" was used in its general sense. Representative Morris K. Udall, Chairman of the House Committee on Interior and Insular Affairs, and manager of the bill on the floor, referred to outer continental shelf lands as "in Alaska." 125 Cong. Rec. 9900, 11,128 (1979). So too did Representative Don Young of Alaska, a member of both the Interior Committee and the Subcommittee on General

Oversight and Alaska Lands. See Id. at 9907. Other congressmen referred to "Alaska's" oil resources in terms that necessarily included oil reserves beneath the outer continental shelf. See id. at 11,174 (Rep. Huckaby); id. at 9893 (Rep. Vento).

In addition to this support for a nontechnical usage of the phrase "in Alaska" to include the outer continental shelf lands and waters, the record of legislative consideration of the Conservation Act contains convincing evidence that Congress intended to include these areas within the reach of section 810.

Appellants make a compelling argument that the provisions of Title VIII of the Conservation Act protecting subsistence uses were intended to have the same territorial scope as provisions

of the earlier Claims Settlement Act extinguishing Native hunting and fishing rights. The two statutory provisions are clearly related. When Congress adopted the Claims Settlement Act it was aware that extinguishing Native rights might threaten subsistence hunting and fishing by Alaska Natives. The Senate version of the Claims Act included provisions directing the Secretary to protect subsistence uses on public lands. The Conference Committee eliminated this provision, but the Committee made it clear that it did so only because it concluded subsistence resources should be protected by the Secretary of Interior through the exercise of existing administrative authority. The Committee wrote: "The Conference Committee expects both the Secretary and the State to take any

action necessary to protect the subsistence needs of the Natives." See H. Conf. Rep. No. 746, 92d Cong., 1st Sess. 37, reprinted in 1971 U.S. Code Cong. & Ad. News 2247, 2250. Title VIII of the Conservation Act was enacted because the Secretary and the state failed to heed Congress's admonition. See S. Rep. No. 413, 96th Cong., 1st Sess. 230-31, reprinted in 1980 U.S. Code Cong. & Ad. News, 5070, 5174-75; S. Rep. No. 1300, 95th Cong., 2d Sess. 195-96 (1978); H.R. Rep. No. 1045, 95th Cong., 2d Sess., pt. I at 183-84 (1978); 126 Cong. Rec. 29278 (1980) (Cong. Udall); 125 Cong. Rec. 9904 (1979) (Cong. Udall). It is a reasonable assumption that Congress intended the preference and procedural protections for subsistence uses mandated by Title VIII of the Conservation Act to be

co-extensive with the extinguishment of aboriginal rights that made those measures necessary.

Congress's intention to protect subsistence uses by rural residents of Alaska is repeatedly and strongly stated in the statute itself. It was a stated general purpose of the Conservation Act "to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so." Section 101(c), 16 U.S.C. S 3101(c). Congress found that continuation of the opportunity of rural Alaskans to make subsistence use of fish and wildlife "is essential to [their] existence." Section 801(1), 16 U.S.C. S 3111(1). Congress further found that "to fulfill the policies and purposes of the [Claims Settlement Act] and as a matter of equity, it is necessary . . . to protect

and provide the opportunity for continued subsistence uses on the public lands. . . ." Section 801(4), 16 U.S.C. S 3111(4). It is Congress's stated policy that "utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands. . . ." Section 802(1), 16 U.S.C. S 3112(1). The stated purpose of Title VIII in particular "is to provide the opportunity for rural residents engaged in a subsistence way of life to do so." Id.

Congressional reports and debates echo these views. 5/ It is clear Congress's concern included all rural Alaskans, 6/ reliance by coastal villagers upon hunting and fishing in waters and on the ice over the outer

continental shelf was well known [7/] strikingly similar circumstances, the Supreme Court has twice given an expansive and non-technical interpretation to geographical terms to achieve Congress's apparent purpose to protect native fisheries. Hynes v. Grimes Packing Co., 337 U.S. 86, 110-16 (1949); Alaska Pacific Fisheries v. United States, 248 U.S. 78, (1918).

There are other indications of a Congressional intent that section 810 apply to outer continental shelf waters. For example, as originally proposed the subsistence provisions applied only to lands in conservation units established by what are now Titles II through VII of the Conservation Act. See H.R. 39, S 701(a), (b), 95th Cong., 1st Sess. (1977). The boundaries of these units were fixed by maps to be approved with

the legislation, see id. S 1(c), and generally would not have included outer continental shelf areas. In the course of legislative proceedings, the coverage of Title VIII was extended beyond the boundaries of the conservation units to include all public lands in Alaska. See 16 U.S.C. SS 3102(3), 3111, 3112. The boundaries of conservation units remained tied to maps, as they are in the Act as passed. See 16 U.S.C. S 3103(a). At the same time, Congress amended the savings clause, 16 U.S.C. S 3125, identifying existing statutes that were not to be considered modified or replaced by the passage of Title VIII, to include the Fishery Conservation and Management Act of 1976, in which the United States asserts exclusive jurisdiction over a fishery conservation zone that extends

200 miles offshore.[8/] See 16. U.S.C. S 1811-12. Although other explanations may be possible, this change suggests Congress understood that Title VIII applied to outer continental shelf waters.

A second example: At least one of the national wildlife refuges created by the Conservation Act (the Yukon Delta National Wildlife Refuge) has within its borders portions of the outer continental shelf and overlying waters. See 48 Fed. Reg. 7890, 8017 (Feb. 24, 1983). Unless these lands and waters are included in Title VIII the protection that title provides for subsistence uses would not apply to the entire Wildlife Refuge though one of the specified purposes of the Refuge is "to provide . . . the opportunity for continued subsistence uses by local residents." See Conservation

Act, Pub. L. No. 96-487, S 303(7) (B) (iii), 94 Stat. 2371, 2392.

The most compelling reason for resolving the ambiguous language of Title VIII in favor of converage of outer continental shelf lands and waters is that Title VIII was adopted to benefit the Natives. Under a familiar rule of statutory construction doubtful language should be construed to further that purpose. See Alaska Pacific Fisheries v. United States, 248 U.S. at 89; United States v. Dann, 706 F.2d 919 at 931, quoting United States v. Santa Fe Pacific R.R., 314 U.S. 339, 353-54 (1941); Puyallup Indian Tribe v. Port of Tacoma, 717 F. 2d 1251, 1257 n.6 (9th Cir. 1983). Congress was specifically advised that

this rule construction would be applied to Title VIII and other subsistence provisions though not to the rest of the Act. In the course of a detailed discussion of the proposed legislation submitted to the House, Congressman Udall said with specfic reference to Title VIII:

> While the [Conservation Act] obviously is not Indian legislation in its entirety, the subsistence title and the other subsistence related provisions are. And under well-recognized canons of statutory construction, any ambiguities in the title and other provisions must be resolved in favor of the Alaska Native people.
>
> This result is also consistent with the Congressional policy established by section 802 (1) that the management of the public lands shall cause the least adverse impact possible on rural residents who depend upon subsistence uses.

126 Cong. Rec. 29,279 (1980). See also 125 Cong. Rec. 9904 (1979).

As appellees have demonstrated,

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reasonable arguments can also be made for a narrow construction of section 810. We find them unpersuasive, however, in light of the evidence of a contrary legislative intent and the admonition that ambiguities in Title VIII "must be resolved in favor of the Alaska Native people."

Appellees rely particularly upon reference to the Conservation Act as a "land bill" that would not inhibit development of oil and gas resources on the outer continental shelf. See e.g., 125 Cong. Rec. 11,128 (1979) (statement of Rep. Udall); id. at 11,170 (statement of Rep. Emery). These statements were made on response to arguements that the Conservation Act "locked up" Alaskan resources. The statements did not refer to Title VIII but rather to Title II - VII which add lands to the National Park

System and other conservation units. Oil and gas exploration and production in fact would be precluded in some of these conservation units and probably in others. Congressman Udall and Emery were making the point that these conservation units did not include the adjacent outer continental shelf and therefore creation of such units did not preclude oil and gas development on the shelf. See also S. Rep. 413, 96th Cong., 1st Sess. 417, reprinted in 1980 U.S. Code Cong. & Ad. News at 5357.

These statements are not inconsistent with the position that Title VIII includes the outer continental shelf since nothing in Title VIII precludes oil and gas development in the areas to which it applies. The only restrictions imposed by section 810 are procedural ones. Once these are

compiled with, "the head of the appropriate Federal agency may manage or dispose of public lands under his primary jurisdiction for any of those uses or purposes authorized by this Act or other law." Section 810(d), 16 U.S.C. S 3120(d). In the words of the Sentate report: "[O]nce the requirements of the section are satisfied and incorporated into existing land use planning processes the proposed action may proceed even though its effect may be adverse to subsistence uses." S. Rep. No. 413, 96th Cong., 1st Sess. 234, reprinted in 1980 U.S. Code Cong & Ad. News at 5178.[9/]

We conclude that the ambiguous language of the Conservation Act should be interpreted to include outer continental shelf lands and waters within the coverage of section 810.

III.

Appellants ask that the lease sale be voided because the Secretary has not complied with the requirements of section 810. Appellees contend the Secretary has substantially complied with the requirements of the section, albeit acting under other statutes, and if he has not, the proper remedy is to maintain the status quo unless and until the Secretary complies with section 810, citing California v. Watt, 683 F.2d 1253, 1266 (9th Cir. 1983), reversed on other grounds, ___ U.S. ___, 104 S. Ct. 656 (1984).

These arguments raise factual and legal issues that have not been but should be considered initially by the district court.

Appellants' request for attorneys' fees is denied. Assuming appellants are prevailing parties we cannot say the government's position was not "substantially justified." See Rawlings v. Heckler, 725 F.2d 1192, 1196 (9th Cir. 1984); Foster v. Toutellotte, 704 F.2d 1109, 1112-13 (9th Cir. 1983).

AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings consistent with this opinion.

EDITOR'S NOTE

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FOOTNOTES

1. We assume rather than deciding that appellants had an aboriginal right to hunt and fish in the waters of Norton Sound above the lands involved in the lease-sale. Since we conclude any such rights were extinguished by the Claims Settlement Act, we also do not decide whether they would be extinguished by the Outer Continental Shelf Lands Act as well.

2. "Native" is defined in the Act as "a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or combination thereof." 43 U.S.C. S 1602(b).

3. Revelant statements from the legislative history are quoted in

United States v. Atlantic Richfield Co.,

612 F.2d 1132, 1136 (9th Cir. 1980):

The House report stated,

> Section 4 extinguishes all aboriginal titles in Alaska, and all claims based thereon,

and

> The section extinguishing aboriginal titles and claims based on aboriginal title is intended to be applied broadly, and to bar any further litigation based on such claims of title.

H.R. Rep. No. 523, 92d Cong., 1st Sess. 6, 8 reprinted in [1971] U.S. Code Cong. & Ad. News 2196, 2198. The Senate report stated that the objective of the legislation was to avoid a myriad of lawsuits which cannot provide justice to any of the parties involved but which may be expected to increase the existing antagonisms between Native people and other Alaskans.

S. Rep. No. 405, 92d Cong., 1st Sess. 73 (1971). The Conference Committee report[77] stated,

> It is clear the direct intent of

> the conference committee to extinguish all aboriginal claims and all aboriginal land titles, if any, of the Native people of Alaska and the language of settlement is to be broadly construed to eliminate such claims and titles as any basis for any form of direct or indirect challenge to land in Alaska.

Conf. Rep. No. 40, reprinted in [1971] U.S. Code Cong. & Ad. News 2253 (emphasis in original).

The statements of former Justice Arthur Goldberg, attorney for the Alaska Federation of Natives, before Congress in 1969 also support the district court's conclusion. Goldberg, under questioning by Senator Stevens of Alaska, said, "The position that the Natives have taken is that they are prepared for an extinguishment of anything that is based upon aboriginal title." Alaska Native Land Claims: Hearings on S. 1830 Before the Senate Comm. on Interior and Insular Affairs, 91st Cong., 1st Sess. 300-01 (1969).

7. The House and Senate Conference Reports are identical. S. Conf. Rep. No. 481, 92d Cong., 1st Sess. (1971); H.R. Conf. Rep. No. 746, 92d Cong., 1st Sess. (1971) [Hereinafter cited as Conf. Rep.]

4. Rep. McClure, a member of the Committee on Interior and Insular Affairs, stated:

> . . . The settlement of this acreage of land is in lieu of other rights, and the bill in specific terms removes hunting and fishing rights. The subsistence lands that may be selected, after the village lands are selected and after the statehood lands are selected, are in lieu of subsistence hunting and fishing rights, and the only hunting and fishing rights they will have are in connection with whatever lands are selected by them under the provisions of the bill.
>
> * * *
>
> . . . The rights for hunting and fishing will be not rights, but whatever is granted to them as a matter of charity or a matter of generosity on the part of the State or the Federal Government. I think we should know that is one of the reasons why the acreage that is granted is as large as it is.

Appellants are two of the villages qualified by section 1610(b) of the Act to recieve land benefits under section 1613(a) and (b).

5. See, e.g., S. Rep. No. 413, 96th Cong., 1st Sess. 230-33, 267-68, reprinted in 1980 U.S. Code Cong., & Ad. News 5070, 5174-77, 5211-12; S. Rep. No 1300, 95th Cong., 2d Sess. 195-96 (1978); H.R. Rep. No. 1045, Pt. I., 95th Cong., 2d Sess. 181-84, 187 (1978); 126 Cong. Rec. 29,278 (1980); 125 Cong. Rec. 9904-05 (1979).

6. See S. Rep. No. 413, 96th Cong., 1st Sess. 268-69, reprinted in 1980 U.S. Code Cong. & Ad. News 5070, 5212-13; S. Rep. No. 1300, 95th Cong., 2d Sess. 220 (1978); 126 Cong. Rec. 29278-79 (Cong. Udall).

7. See pp. 6-8, supra. See also Inclusion of Alaska Lands in National

Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems, Hearings on H.R. 39, H.R. 1974, H.R. 2876, H.R. 5505, et al, H.R. 1454, H.R. 5605, & H.R. 8651. Before the Subcommittee on General Oversight and Alaska Lands of the House Committee on Interior and Insular Affairs, 95th Cong., 1st Sess., pt. XIII at 468, 484, 487, 510-528 (1977) (report discussing Artic Slope Subsistence uses of resources of the ocean and sea ice).

8. Compare H.R. 39, S 701(g), 95th Cong., 1st Sess. (Comm. Print Oct. 12,1977) with H.R. 39, as amended, S 713, 95th Cong., 2d Sess. (1978).

9. The response to other

arguments against a broad interpretation of section 810 may be stated briefly.

Rejected by Congress of proposals to extend the coverage of conservation units to areas beyond the territorial sea, (See, e.g., S. Rep. No. 1300, 95th Cong., 2d Sess. 149-50 (1978); 124 Cong. Rec. 18025-27 (1978)) is not relevant to the interpretation of Title VIII for the reason mentioned: inclusion in a Title II-VII conservation unit might bar future development, but inclusion in Title VIII would not. Moreover, the "complexity of jurisdictions" that would have resulted from extension of conservation units seaward, id., would not occur under Title VIII since this title contemplates administration of both state and federal lands by the

state for the purpose of this section (S 805(d), 16 U.S.C. S 3115(d)). See also 126 Cong. Rec. 29280 (1980).

Other federal statutes applicable in one fashion or another to resource management on the outer continental shelf are neither so comprehensive nor inconsistent with Title VIII as to support an inference that Title VIII does not apply to these areas. Section 810(b) provides expressly for situations in which both Title VIII and the National Environmental Protection Act, 42 U.S.C. S 4321, et seq., will be applicable. Other statutes of general applicability mentioned by appellees (the Endangered Species Act, 16 U.S.C. S 1531-43; the Coastal Zone Management Act, 16 U.S.C. SS 1451-54; and the Outer Continental Shelf Lands Act, 43 U.S.C. SS 1331-56) pursue different goals by

different means than Title VIII of the Conservation Act, and may be applied consistently with Title VIII.

Appellees argue that subjecting outer continental shelf lands and waters to certain provisions of the Act other than Title VIII in which the term "public lands" is used would provide "absurd and unintended consequences." We have examined the provisions relied upon by appellees and are satisfied the interpretative difficulties they suggest are resolvable. We need not examine them in detail here, however, since in any event Congress was aware that a standard of interpretation requiring resolution of ambiguities in favor of the Natives would be applicable only to Title VIII and other subsistence provisions of that Act. See 126 Cong. Rec. 29,279 (1980); 125 Cong. Rec. 9904 (1979).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

THE INUPIAT COMMUNITY OF THE ARTIC SLOPE, a federally recognized Indian tribe; UKPEAGVIK INUPIAT CORPORATION, a native village corporation, et. al.,	FILED OCT 1 1982
Plaintiffs,	
v.	NO. A 81-19 Civil
THE UNITED STATES OF AMERICA, et. al.,	OPINION AND ORDER
Defendants.	

Before the Hon. James M. Fitzgerald
United States District Judge

APPEARANCES:

FOR PLAINTIFFS: James D. Gilmore
Gilmore & Feldman
1031 W. 4th Ave.,
Suite 304
Anchorage, AK 99501

Richard M. Berley,
Robert L. Pirtle
and Mason Morisset,
ernstoff & Chestnut
Metropolitan Park,
16th Floor
1100 Olive Way
Seattle, WA 98101

FOR DEFENDANTS:

United States of America, Cecil D. Andrus, Sec'y of Interior and Frank Gregg, Director of the Bureau of Land Management.	Assistant United States Attorney Cynthia Pickering and United States Attorney Michael Spaan Federal Bldg. & Courthouse 701 C St.-Box 9 Anchorage, AK 99513
Jay Hammond, Governor of the State of Alaska and Robert E. Leresche, Commissioner of Alaska Dept. of Labor Resources.	Thomas J. Meacham, Asst. Attorney General, State of Alaska, 420 L Street Suite 100 Anchorage, AK 99501
KONIAG, Inc.	Dan A. Hensley & Margie MacNeille of Duncan, Weinberg & Miller 420 L Street Suite 407 Anchorage, AK 99501
NANA REGIONAL CORP.	William H. Timme Wilkinson, Cragun & Barker 601 W. 5th Ave. Suite 420 Anchorage, AK 99501 Richard Anthony Baenen, Erwin Foster DeReitzes & Jacquelyn R.Luke 1735 N.Y. Ave.N.W. Wash., D.C.20006

SEALASKA CORPORATION	Bruce Monroe Birch, Horton, Bittner, Monroe Pestinger & Anderson 130 Seward St. Suite 411 Juneau, AK 99801
AMOCO PRODUCTION CO. ATLANTIC RICHFIELD B.P. ALASKA EXPLORATION, INC. CHEVRON CITIES SERVICE OIL CO. CONOCO, INC. EXXON CORP. GULF OIL CORP. HAMILTON BROS. OIL CO. MURPHY OIL PHILLIPS PETROLEUM CORP ROWAN DRILLING CO. SHELL OIL COMPANY SOHIO NATURAL RESOURCES TEXASGULF UNION OIL COMPANY	Carl J.D. Bauman & Richard O. Gantz of Hughes, Thorsness, Gantz, Powell & Brundin 509 W. 3rd Ave. Anchorage, AK 99501 Edward R. Mackiewicz and Brice M. Clagett of Covington & Burling 888 16th St. N.W. Washington, D.C. 20006

In this case the Inupiat people of Alaska's north slope seek to quiet title in large portions of the Beaufort and Chukchi Seas beyond the three mile limit.[1/] The plaintiffs include the Inupiat Community of the Arctic Slope, a federally recognized tribe, suing on its own behalf and on behalf of its members, the Ukpeagvik Inupiat Corporation, a village corporation organized pursuant to the Alaska Native Claims Settlement Act, suing on its own behalf and on behalf of its members, and two native allotees. The defendants include numerous oil companies, the United States, its Secretary of the Interior and its Director of Land Management, and the State of Alaska, its Governor and its Commissioner of Natural Resources.[2/]

This is not the first time that these parties have met in a courtroom. This suit is but the latest in a line of legal actions through which the Inupiat Eskimo have sought control over the region in which they have long resided. In an earlier proceeding the Inupiat sought recovery in damages for trespass on native lands in the time period prior to the enactment of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601-1626, United States v. Atlantic Richfield Co., 435 F.Supp. 1009 (D.Alaska 1977), aff'd, 612 F.2d 1132 (9th Cir.), cert denied, 449 U.S. 888 (1980); see also Edwardsen v. Morton, 369 F.Supp. 1359 (D.D.C. 1973).

Later the Inupiat filed proceedings in the Court of Claims alleging that the United States had breached a trust responsibility in not protecting the Arctic Slope from development and that extinguishment of their trespass claims by ANCSA was an unconstitutional taking. That claim was also rejected. Inupiat Community of the Artic Slope v. United States, 680 F.2d 122 (Ct.Cl. 1982)

More recently, the Inupiat sought to enjoin on environmental grounds the 1979 Beaufort Sea lease-sale. They claimed that the sale and its consequent environmental damage to their traditional fishing and whaling areas would violate a federal trust responsibility owed to them and would violate numerous federal statutes as well.

Although the district court granted the injunction, it was overturned by the court of appeals which found that the federal government had acted in conformity with the applicable law. North Slope Borough v. Andrus, 486 F.Supp. 332 (D.D.C. 1980), rev'd 642 F.2d 589 (D.C.Cir. 1980). In May of 1981, the Inupiat moved to intervene in an action currently pending before the United States Supreme Court acting under its original jurisdiction. United States v. Alaska, No. 84 Orig. (U.S. 1980). That action concerns a dispute over the exact location of the three mile limit in the Beaufort Sea. By their complaint in intervention, the Inupiat have requested that the United States Supreme Court hear essentially the same title and sovereignty claims which they assert here.

In this present proceeding, the Inupiat again challenge the lease-sale made in the Beaufort Sea in 1979. They assert that they possess sovereign rights and unextinguished aboriginal title to the area lying from three to sixty-five miles off-shore in the Beaufort and Chukchi Seas of the Arctic Ocean. In support of the contention, the Inupiat claim exclusive use and occupancy of the superjacent sea ice from time before human memory. This claim, according to the Inupiat, establishes rights to the surface of the sea, the water column beneath it, the seabed, and the minerals lying beneath the seabed within the geographic boundaries of their claim. In addition to the injunctie relief, the Inupiat seek damages and a declaration of their title to and control over the area.

This litigation does not involve property rights arising out of federal statute or by reason of any treaty to which the United States is a party. The Inupiat claims rest on immemorial use and occupancy alone. To support their allegations they have filed in this court numerous documents including affidavits, government records and scholarly works attempting to document their traditional use of the sea ice as living space.

All defendants have answered the Inupiat claims and have moved for judgment on the pleadings reserving for later issues of limitation, standing and capacity. At this time I address only the motion for judgment on the pleadings which shall be considered as a motion for summary judgment since additional documents have been filed and considered. Fed. R. Civ. P. 12 (c).

In support of their motions the defendants argue, among other things, that the result of this case is controlled by a line of Supreme Court cases beginning with United States v. California, 332 U.S. 19 (1947) in which the Court first recognized the paramount rights of the United States in ocean waters lying seaward of the ordinary low water mark. In opposition, the Inupiat undertake to distinguish these authorities by arguing that the previous cases deal only with the competing rights of the federal government and the states and have little to do with the rights of American natives such as themselves. I disagree. To accept the interpretation now urged by the Inupiat would be to ignore the underlying principle upon which the Supreme Court has placed reliance, that federal

supremacy over the adjacent seas is an essential element of national sovereignty. I therefore conclude that claims of sovereign power over the oceans whether made by one of the several states in the Union or by the Inupiat or by any other native tribe is inconsistent with national sovereignty and must fail. United States v. Maine, 420 U.S. 515 (1975); United States v. Texas, 339 U.S. 707 (1950); United States v. Louisiana, 339 U.S. 669 (1950); United States v. California, 332 U.S. 19 (1947).

The controlling issue of whether the state or the federal government had the right to lease mineral resources of the ocean seabed was addressed by the Supreme Court for the first time in United States v. California, 332 U.S. 19.

In reaching its decision the Court reasoned that "protection and control of (the three mile belt) has been and is a function of national external sovereignty." Id. at 34. This was necessarily so, the Court concluded, since

> (A)s peace and world commerce are the paramont responsibil ities of the nation, rather than an individual state, so, if wars come, they must be fought by the nation. The state is not equipped in our constitutional system with the powers or facilities for exercising the responsibilities which would be concomitant with the dominion which it seeks... (N)ational interests, responsibilities and therefore national rights are paramount in waters lying to the seaward in the three-mile belt.

332 U.S. at 35-36. If a state is not equipped with the powers and facilities necessary to undertake the responsibilities concomitant witih dominion over the seas, certainly the Inupiat are less so.

In United States v. Louisiana, 339 U.S. at 699, the Supreme Court extended the holding of California beyond the three-mile limit and applied it to the outer continental shelf. Once again, the Court reiterated that

> The marginal sea is a national, not a state concern. National interests, national responsibilities, national concerns are involved. The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must therefore be paramount in that area.

339 U.S. at 704. In extending federal control as far as 27 miles off-shore, the Court said:

> If, as we held in California's case, the three-mile belt is in the domain of the Nation rather than that of the separate States, it follows a fortiori that the ocean beyond that limit also is. The ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea. Certainly, it is not less so.

339 U.S. at 705. In the companion case of United States v.Texas, 339 U.S. at 707, the Court rejected state claims of sovereignty and ownership over the sea-bed extending some ten miles offshore and dating from the period when Texas was an independent republic. In doing so, the Court said:

> (O)nce low-water mark is passed the international domain is reached. Property rights must then be so subordinated to political rights as in substance to coalesce and unite in the national sovereign. Today the controversy is over oil. Tomorrow it may be over some other substance or mineral or perhaps the bed of the ocean itself. If the property, whatever it may be lies seaward of low-water mark, its use, disposition, management, and control involve national interests and national responsibilities. That is the source of national rights in it.

339 U.S. at 719. (Emphasis supplied).[3/]

The Court has recently reaffirmed these principles in the face of a strong challenge from the 13 eastern seaboard states. United States v. Maine, 420 U.S. 515 (1975). These states base their claim to the entire continental shelf on a demonstration of interest and sovereignty dating from earliest colonial times. While they argued that their claims were not foreclosed by the previous line of cases beginning with California, they also argued that that line of cases was incorrect and should be overruled. The Court firmly rejected both contentions and described the California line of cases as having held that,

> as a matter of "purely legal principle...the Constitution ...allocated to the federal government jurisdiction over foreign commerce, foreign affairs and national defense" and that "it necessarily follows, as a matter of constitutional law, that as attributes of these external sovereign powers the federal government has paramount rights in the marginal sea."

United States v. Maine, 420 U.S. at 522-23. If, as a matter of constitutional law, the federal government must be possessed of paramount rights in offshore waters, it makes no difference whether the competing domestic claimant is a state or a tribe of American natives. All are subordinate to the federal government, and neither can, under the constitution, claim rights which are at odds with those which are of necessity entrusted to the one external sovereign

recognized by the Constitution. United States v. Wheeler, 435 U.S. 313, 323, 326 (1978). (Indian tribes are "dependent...within our territorial jurisdiction" and have no "freedom to determine external relations.")

Moreover, the federal government has consistently exercised exclusive jurisdiction and control over the adjacent waters and the seabed on the continental shelf. In the exercise of this jurisdiction, Congress has on occasion enacted statutory provisions permitting certain rights of subsistence for natives. See e.g., Fishery Conservation and Management Act of 1976, 16 U.S.C. SS1801-1882 (Indian treaty fishing rights given special recognition). Marine Mammal Protection Act, 16 U.S.C. S1371(b) (Explicit exemption for native subsistence

whaling). The necessary implication is that Congress intended to permit use by Alaska natives of subsistence rights only to the extent authorized. Hence, federal recognition of any sovereign power or property right arising out of subsistence activities would be both inconsistent and illogical. Other federal legislation also reflects the complete and exclusive power of the federal government in the adjacent waters and in the seabed on the continental shelf. See e.g., Outer Continental Shelf Lands Act, 43 U.S.C. SS1331-43 (1953); Submerged Lands Act, 43 U.S.C. SS1301-15 (1953).

I conclude as well that the Inupiat people could not have acquired rights to the sea surface, water column and bed in the disputed area prior to 1867 when the United States purchased the area from Russia for, as the Supreme Court noted

in United States v. California, as late as 1876 the concept of territorial sovereignty over adjacent seas remained doubtful under international law. 332 U.S. at 31-33. Nor could the Inupiat have acquired those rights after 1867 because once a tribe of American natives is brought within the jurisdicition of the federal government, it loses all elements of external sovereignty including the capacity to acquire sovereignty over or ownership of unclaimed lands. Montana v. United States. 450 U.S. 544, rehearing denied, 452 U.S. 911 (1981); United States v. Wheeler, 435 U.S. 313, 323, 326 (1978); Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1832); Johnson v. M'Intosh, 21 U.S. (8 Wheat) 543, 572-73 (1923).

Much of the Inupiat's claim to the Beaufort and Chukchi Seas off-shore areas is based on notions of tribal

sovereignty. The Inupiat constantly reiterate that they have never been conquered, have never voluntarily submitted to the jurisdiction of the United States, and have at every opportunity resisted federal and state regulation of their hunting, fishing, whaling, and sealing rights. In effect, the Inupiat claim that they have all the rights of self-determination and sovereignty of an independent nation. These assertions sweep far too broadly.

Tribes of American natives especially those living on reservations, do possess some powers of self determination and sovereignty over their territory. White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 142 (1980). These powers are especially strong when they relate to the internal sovereignty of the tribe and its rights to

self-government and management of the affairs of its members. McClanahan v. Arizona State Tax Commission, 411 U.S. 173 (1973); United States v. Kagama, 118 U.S. 375, 381-82 (1886). The external sovereignty of the tribes, however, is sharply limited by their dependent status. Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 208-09 (1978). In areas where the security of the United States as a nation and its dealings with foreign countries are a major concern, the intrinsic authority of the tribes is revoked by implication. Id. at 209-10. The Supreme Court has repeatedly noted the dominant interests of the national sovereign in the outer continental shelf. United States v. Maine, 420 U.S. 515, 521 (1975); United States v. Texas, 339 U.S. 707, 719 (1950). Any exercise of external sovereignty by the Inupiat in the area of the outer continental

shelf would be inconsistent with their status as members of the United states and hostile to the interests of the nation as a whole.

The Inupiat also plead their title and sovereignty claims in terms which assert the violation of a trust relationship which they contend exists between themselves and the federal government. Complaint S35. This claim also fails. Unless Indian money or property is involved, a trust relationship can only arise from a legislative enactment, a treaty, or executive order. North Slope Borough v. Andrus, 642 F 2d 589, 612 (D.C. Cir 1980); Navajo Tribe of Indians v. United States, 624 F.2d 981, 988 (Ct. Cl. 1980). ("[I]f no tribal money or property is involved and the question is, for instance, whether the United States has a general fiduciary

obligation to educate Indians, then existence of the special relationship for that purpose depends upon the proper interpretation of the terms of some document. (e.g. statute, treaty, executive order).") No Oilport! v. Carter, 520 F.Supp. 334, 373 (W.D. Wash. 1981) ("A generalized trust responsibility does not exist in the abstract, but rather only arises from a statute, treaty, or executive order.") Cape Fox Corporation v. United States, 456 F.Supp. 784 (D. Alaska 1978). No such language has been brought to the attention of this court. Since I have found that the Inupiat have no property rights in the area claimed and no treaty, statute or executive order has been offered to support the claim of a trust relationship, I conclude that the Inupiat's claim of trust relationship is without foundation.

Moreover, I find that this claim is collaterally estopped by the court's finding in North Slope Borough v. Andrus, 642 F.2d at 611-12, because the claim that the plaintiffs make here is essentially identical to the one asserted there, and the plaintiffs, while not the same, are so closely aligned as to be "virtual representatives" of each other. United States v. Rayonier, Inc., 627 F.2d 996, 1003 (9th Cir. 1980) (and cases cited therein.)

Finally, I conclude that the Inupiat's religious claim is also without foundation. It meets neither of the two elements of the test set by Wisconsin v. Yoder, 406 U.S. 205 (1972). First, the action of the federal government in initially leasing in the Beaufort and Chukchi Seas beyond the three mile limit does not create a

serious obstacle to the exercise of the plaintiff's religion. While the Inupiat allege that the government's actions threaten to deny them access to sacred sites, those they identify are located on land, well outside the area at issue in this suit. They offer no explanation of the religious significance of even those sites, see Sequoyah v. TVA, 620 F.2d 1159, 1163 (6th Cir.), cert. denied, 449 U.S. 953 (1980), and they offer no explanation of how the defendants' activities may interfere with their free exercise of religion. See Badoni v. Higginson, 638 F.2d 172, 180 (10th Cir. 1980), cert. denied, 452 U.S. 954 (1981). They also allege possible disruption of appeasement ceremonies, again without definition

In essence, the Inupiats claim that their religious beliefs are inextricably intertwined with their hunting and

gathering life-style, and since all exploratory activities negatively affect some portion of their subsistence area, all such activity should be interdicted on free-exercise grounds. Carried to its ultimate, their contention would result in the creation of a vast religious sanctuary over the Arctic seas beyond the state's territorial waters. A claim to such a large area based on such non-specific grounds cannot provide the sort of "serious obstacle" contemplated by Yoder. Cf. Sequoyah v. TVA, 620 F.2d at 1164-65.[4/]

The Inupiat's claim also fails to meet the second requirement of Yoder. The government's interest in pursuing the development of the area outweighs the alleged interference with the plaintiffs' religious beliefs. The federal government has a significant economic stake in the development of

energy resources within its border. Conversation Law Foundation, et.al. v.Andrus, et.al., 617 F.2d 298 (1st Cir. 1980); North Slope Borough v. Andrus, 642 F.2d 591, 593 (D.C. Cir 1980). Perhaps more importantly, the United States has treaty obligations to keep the high seas freely available for international passage and fishing. Convention on the Continental Shelf, done, Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, Article 3; Convention on the High Seas, done, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, Articles 1 & 2. Against these specific needs and obligations, I find that the generalized claims of the Inupiat are not adequate to strike the balance in their favor. Cf. Badoni v. Higginson, 638 F.2d at 177-79 (Impoundment behind dam flooded several Navajo gods and denied access to specific sacred prayer

place. Government also gave tourists access to prayer spot with resulting desecrations. Summary dismissal of Indian claims affirmed because government's decision to build dam and fill impoundment vital to multistate water storage and power generation project.)

Finally, I observe that the relief sought by the Inupiat creates serious Establishment Clause problems. The Supreme Court has held repeatedly that the First Amendment may not be asserted to deprive the public of its normal use of an area. E.g., Shuttlesworth v. Birmingham, 394 U.S. 147, 152 (1969); Food Employees Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308, 320 (1968); Cox v. Louisiana, 379 U.S. 536, 554-55 (1965); Niemotko v. Maryland, 340 U.S. 268, 271 (1951). I deal in this suit with the high seas, an area which is

place. Government also gave tourists access to prayer spot with resulting desecrations. Summary dismissal of Indian claims affirmed because government's decision to build dam and fill impoundment vital to multistate water storage and power generation project.)

Finally, I observe that the relief sought by the Inupiat creates serious Establishment Clause problems. The Supreme Court has held repeatedly that the First Amendment may not be asserted to deprive the public of its normal use of an area. E.g., Shuttlesworth v. Birmingham, 394 U.S. 147, 152 (1969); Food Employees Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308, 320 (1968); Cox v. Louisiana, 379 U.S. 536, 554-55 (1965); Niemotko v. Maryland, 340 U.S. 268, 271 (1951). I deal in this suit with the high seas, an area which is

public to the world under American law. Convention on the Continental Shelf, supra; Convention on the High Seas, supra. I therefore hold with other courts that a free-exercise claim cannot be pushed to the point of awarding exclusive rights to a public area. Badoni v. Higginson, 638 F.2d at 178-79; Hopi Indian Tribe v. Block, No. 81-0481, 81 I.L.R. 3073 (D.D.C. June 12, 1981)>

For the several reasons stated above, I conclude that the defendants are entitled to judgment against all claims made by the plaintiffs. The clerk will enter judgment accordingly.

IT IS SO ORDERED.

Dated at Anchorage, Alaska, this ___ day of October, 1982.

_____

JAMES M. FITZGERALD
United States District
Judge

Cys: Gilmore
Pickering
Meacham
Hensley/MacNeille
Timme
Monroe
Bauman/Gantz
Fleischer

FOOTNOTE

1. The complaint also seeks damages for trespass in an unspecified amount, imposition of a constructive trust on the revenues from all past and future oil, gas and mineral recoveries in the area, an injunction against any use by the defendants that interferes with the plaintiffs' rights, an injunction against any further leasing on the outer continental shelf which would interface with plaintiffs' rights, a declaration that the Outer Continental Shelf Lands Act is unconstitutional as applied, at least to the extent that it is inconsistent with Inupiat rights in the area, and an order directing defendants and their agents to remove all structures and equipment from the plaintiffs' property.

2. The Inupiat conceded at oral argument that the state is only a nominal party since their claims begin at the three mile limit, which is the state's boundary.

3. United States v. Texas, 339 U.S. at 719, also controls a claim of title separate from one of sovereignty. The Court said that in these instances"... property rights are so subordinated to the rights of sovereignty as to follow sovereignty."

4. The Cherokee nation sought to prevent flooding of sacred sites and burial grounds in original tribal homelands in impoundment behind Tellico Dam. Held not a serious obstacle since tribe made no showing of central significance of these sites and this valley to the religious life of the tribe.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

INUPIAT COMMUNITY OF THE ARCTIC SLOPE and UKPEAGVIK INUPIAT CORPORATION, et al.,	FILED FEB 05 1985
Plaintiffs-Appellants,	No. 82-3678
v.	
UNITED STATES OF AMERICA, et al.,	ORDER
Defendants-Appellants.	

Before: Browning, Chief Judge, HUG, Circuit Judge, and Reed*, District Judge.

The panel has voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

*Honorable Edward C. Reed, Jr., United States District Judge for the District of Nevada, sitting by designation.

Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

THE PEOPLE OF THE VILLAGE OF GAMBELL, an Alaskan Native IRA Association, and THE PEOPLE OF THE VILLAGE OF STEBBINS, an Alaskan Native IRA Association,	FILED MAR 14 1983
Plaintiffs,	
v.	
JAMES S. WATT, Secretary of the Interior, and THE UNITED STATES DEPARTMENT OF THE INTERIOR,	No. N83-003 Civil
Defendants,	ORDER
ARCO ALASKA, INC., et al.,	
Defendant-Intervenors.	

The plaintiffs in this suit seek to enjoin the Secretary of the

Interior from leasing 429 tracts in Norton Sound for oil and gas exploration and production. This Lease Sale, No. 57, is part of a five-year oil and gas leasing program under the Outer Continental Shelf Lands Act, 43 U.S.C. SS 1331-1356(supp. 1980).

The complaint, a motion for a preliminary injunction and a motion to shorten time on the preliminary injunction were filed in Nome on March 4, 1983 and assigned to Judge von der Heydt. Acting in an emergency basis during Judge von der Heydt's absence, I granted plaintiffs' motion to shorten time and established an expedited briefing schedule. I also granted an unopposed motion to intervene by several oil companies and heard oral argument from all parties on March 11, 1983.

The residents of the villages of Gambell and Stebbins practice a subsistence lifestyle, relying extensively on the harvest of marine mammals, fish and birds for their livelihood and for cash income. Plaintiffs claim that the tracts offered for lease by the Secretary are public lands in Alaska for the purposes of the Alaska National Interest Lands Conservation Act (ANILCA) Pub. L. 96-487, 94 Stat. 2427, 16 U.S.C. §§3101-3233 (Supp. 1981) and that the Secretary has failed to hold the hearings and make the findings required by subsections 801(a), (b) of that act, 16 U.S.C. §3120(a).

Subsections 810(a) and (b) provide:

"(a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evalulate the effect of such use, occupancy, or dispostion on subsistence uses and needs, the availablity of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency--

(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 3115 of this title;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and

(3) determines that (A) such a significant restriction of

> subsisitence uses is necessary, consistant with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.
>
> Environmental Impact Statement
>
> "(b) If the Secretary is required to prepare an environmental impact statement pursuant to section 4332(2) (C) of Title 42, he shall provide the notice and hearing and include the findings required by subsection (a) of this section as part of such environmental impact statement."

16 U.S.C. §3120(a), (b) (Supp. 1981).

The Secretary claims that he is not required to comply with ANILCA since it applies only to public land in Alaska. In his opinion the area of the outer continental shelf is neither

public land nor in Alaska. See 16 U.S.C. §3102 (1)-(3).

The Bureau of Land Management prepared and published a final environmental impact statement on Lease Sale No. 57 in February of 1982. The scoping process employed to identify major issues for the statement included a meeting in Nome with representatives of the village of Gambell and another in Stebbins, and these meetings resulted in identifying the impact of the proposed leasing on subsistence lifestyles as a major issue. Although the final EIS contains discussions of the ancticipated effects of the proposal and its alternatives on subsistence, the EIS does not include the findings envisioned by §810.

Plaintiffs also claim they possess aboriginal hunting and fishing rights

in the area of the proposed lease, which the Secretary has a trust obligation to protect and which rights would be injured by the proposed lease. The Alaska Native Claims Settlement Act (ANCSA) settled the claims of natives to land, waters and interests therein in Alaska. See generally 43 U.S.C. §1603(b)(1976). Plaintiffs argue that in fairness and by statute (see 16 U.S.C. §3102) "public lands in Alaska" has the same meaning in ANILCA as it does in ANCSA. Therefore, plaintiffs argue, if the areas of the proposed lease are not public lands subject to the procedural protections of §810 of ANILCA, they are not public lands to which their aboriginal claims were extinguished by ANCSA.

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STANDARD FOR PRELIMINARY INJUNCTION

The plaintiff claims the Court need not consider traditional equitable principles in determining whether an injunction should issue once a substantial violation by a federal official of a statute, presumably ANILCA, has occurred. See California v. Bergland, 483 F. Supp. 465, 498-99 (E.D. Calif. 1980) aff'd in part, rev'd in part, remanded all on other grounds, sub nom. California v. Block, 690 F.2d 753 (9th Cir. 1982). I disagree with plaintiff's conclusion that Bergland states the standard in the Ninth Circuit for this motion. First, Bergland derived this automatic injunction standard, at least in part, from Warm Springs Dam Task Force v. Gribble, 565 F.2d 549, 551 (9th Cir. 1977).

Neither Warm Springs nor the cases cited therein support the proposition that the Court must act reflexively to issue injunctions in the face of agency violations. Cf. Warm Springs Dam Task Force v. Gribble, 565 F.2d at 552 n. 2. ("somewhat more liberal standards for granting an injunction under the NEPA than in other litigation"). Moreover, in Wienberger v. Romero-Barcello, 102 S. Ct. 1798, 1807 (1982) the Supreme Court reversed a ruling by the First Circuit that a violation of the Federal Water Polution Control Act obviated equitable considerations in favor of an automatic injunction. The Supreme Court held that the FWPCA should be construed

> "'In favor of that interpretation which affords a full opportunity for equity courts to treat

> enforcement proceedings... in accordance with their traditional practices as conditioned by the necessities of the public interest which Congress has sought to protect.'"

Weinberger v. Romero-Barcello, 102 S.Ct. at 1807 quoting Hecht v. Bowles, 321 U.S. 321, 330 (1944). I find nothing in this proceeding or in ANILCA to supplant the consideration of traditional equitable principles. Accordingly, I conclude the traditional considerations in determining whether to grant injunctive relief are these: (1) have the movants established a strong likelihood of success on the merits; (2) does the balance of irreparable harm favor the movants; (3) does the public interest favor granting the injunction? Sierra Club v. Hathaway, 579 F.2d 1162, 1167 (9th Cir. 1978) (appeal from denial of preliminary injunction to prevent

execution of lease under geothermal leasing program) citing Warm Spring Dam Task Force v. Gribble, 565 F.2d at 551. The effect of the Ninth Circuit's adoption in Wm. Inglis & Sons Baking Co. v. ITT Continental Baking Co., 526 F.2d 86, 88 (9th Cir. 1975) of the "serious question" alternative test is to require the issuance of a preliminary injunction upon a clear showing of either: (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits and a balance of hardships tipping decidedly toward the moving party. Aleknagik Natives Ltd. v. Andrus, 648 F.2d 496 (9th Cir. 1980), citing City of Anaheim v. Kleppe, 590 F.2d 285, 288 n.4 (9th Cir.1978).

I conclude, from applying the considerations, that the plaintiffs'

present motion for a preliminary injunction should be denied.

LIKELIHOOD OF SUCCESS ON THE MERITS

The crucial issue here, easily lost in the skirmishing over definitions of "public lands" and "in Alaska", is whether Congress intended the subsistence protections of S810 to apply to OCSLA leases offshore from Alaska. I cannot conclude from the pleadings now before me that plaintiffs have a strong likelihood of success on this claim. I do, however, conclude that the issue is a serious one, and, based on statements at oral argument, believe the issue can and should be resolved on motions for summary judgment before the Secretary issues these leases.

As to the alternative claim based on aboriginal hunting and fishing in the

OCS, I conclude that plaintiffs have very little chance of success. I considered similar claims in Inupiat Community of the Artic Slope v. United States, 548 F. supp. 182, 187, (d. Alaska 1982) on appeal No. 82-3678, and held that they were without merit. Plaintiffs argue that their claims are distinguishable since they, unlike the Inupiat, are not claiming title to land, but I do not see that this distinction would change the result in any way.

IRREPARABLE HARM

Although the question whether ANILCA establishes procedures in addition to those now required under OCSLA prior to leasing OCS tracts is a serious one, the balance of irreparable harm does not tip sharply in plaintiffs' favor at this time.

Although the Secretary will recieve bids on March 15, 1983, he cannot issue leases until an antitrust review has been completed by the Attorney General, 43 U.S.C. S1337(c). This process is expected to take thirty to sixty days. Once the leases have been issued, no exploration or production can take place until further studies are made and Secretarial approval given. 43 U.S.C. S 1340. I find that almost all of the harm anticipated by the plaintiffs (see plaintiffs' brief in support, pgs. 4-14) will flow from activities associated with exploration and production and not from the Secretary's receipt of the bids. The only immediate harm claimed by the plaintiffs is that even the receipt of the leases will create inflationary pressures on the subsistence economies of the villages.

I find this harm to be of minor importance.

In a similar circumstance, the Second Circuit vacated an injunction issued by the District Court, holding that an OCSLA lease sale such as that proposed for March 15, 1983 did not cause any irreparable injury in and of itself and that the national interest would be clearly damaged by aborting a sale. 9 ERC 1793, 1794 (2nd Cir. 1976). Justice Marshall subsequently refused to vacate the stay of the injunction ordered by the Second Circuit. New York v. Kleppe, 429 U.S. 1307 (1976).

The irreparable harm to the intervenor defendants is also not great. Further delays in the presentation of bids exposes the bidders to greater risks of compromising their research

data and greater costs in preparation for the sale, but these are mere monetary losses.

I find that the balance of hardships does not tip decidedly toward the plaintiffs at this point; therefore, I deny the plaintiffs' motion for a preliminary injunction. Because, however, I believe that a serious question is raised by the first plaintiffs' claims and that this question should be resolved on its merit prior to issuing the leases, I will establish an expedited briefing schedule for consideration of this case on the merits. Accordingly, plaintiffs may have ten days from today's date to move for summary judgment and to support their position with further briefs if they so desire. The plaintiffs' then-filed motion shall also be deemed an opposition to defendent's motion to

and intervenors shall have five days to oppose the plaintiffs' motion.

ORDERED ACCORDINGLY.

DATED at Fairbanks, Alaska, this 14th day of March, 1983.

JAMES M. FITZGERALD
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

THE PEOPLE OF THE VILLAGE OF GAMBELL, an Alaskan Native IRA Association, and THE PEOPLE OF THE VILLAGE OF STEBBINS, an Alaskan Native IRA Association, Plaintiffs, vs. JAMES S. WATT, Secretary of the Interior, and THE UNITED STATES DEPARTMENT OF THE INTERIOR, Defendants ARCO ALASKA, INC., et al., Defendant-Intervenors.	)	FILED APR 04 1983 MEMORANDUM AND ORDER

N83-003 CIV

THIS CAUSE comes before the court on plaintiffs' motion for summary

judgment. There are two issues before the court in this motion, both of which can be answered as a matter of law. I. S810 of ANILCA

The parties disagree as to whether the "public lands" reference in S810(a) of ANILCA was meant to include federal lands and waters lying seaward of the three-mile territorial boundaries of Alaska. The court agrees with defendants and defendant-intervenors, and holds that S810(a) is inapplicable to such lands on the Outer Continental Shelf.

To determine the meaning of "public lands" the court need merely look to the definitional section in title I of ANILCA. Congress gave the term a specific meaning for the purpose of the Act. Public lands means "land situated

in Alaska" to which the United States holds title. S102(3) of ANILCA (emphasis added). The court believes the plain meaning of this phrase is clear and rejects plaintiffs' attempts to manufacture an ambiguity. The court also has reveiewed the legislative history and further concludes there is no persuasive evidence that Congress intended the phrase "public lands", as used in S810(a), should include offshore lands and waters outside the territorial boundaries of Alaska. It is significant to the court that Congress did not mention the Outer Continental Shelf in deliberations concerning both S102(3) and S810(a).

II. Aboriginal Rights

Plaintiffs assert the lease sale at issue will injure their possessory interests based on alleged aboriginal hunting and fishing rights. The court

rejects this argument and holds that, consistent with Judge Fitzgerald's opinion in Inupiat Community of Arctic Slope v. United States, plaintiffs have no property rights in the Outer Continental Shelf lands subject to this lease sale. 548 F.Supp. 182, 188 (D. Alaska 1932), appeal pending, No. 82-3678 (9th Cir. 1982).

Accordingly, IT IS ORDERED:

1) THAT plaintiffs' motion for summary judgment is denied as to both claims for relief set forth in the complaint.

2) THAT federal defendants' motion to dismiss will be decided as soon as briefing is completed.

DATED this 4th day of April, 1983, at Anchorage, Alaska.

United States District Judge

cc: Donald Cooper

U.S. Attorney

Carl J.D. Bauman

(3)

Office-Supreme Court, U.S.
FILED
JUL 30 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1801

In the Supreme Court of the United States

OCTOBER TERM, 1985

INUPIAT COMMUNITY OF THE ARCTIC SLOPE, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that whatever claims of aboriginal title and sovereignty petitioners may once have had over the Beaufort and Chukchi Seas of the Arctic Ocean have been extinguished.

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In the Supreme Court of the United States

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A4) is reported at 746 F.2d 570, and the opinion of the district court (Pet. App. A59-A90) is reported at 548 F. Supp. 182. Much of the reasoning of the court of appeals is set forth in its opinion in a companion case, *People of the Village of Gambell* v. *Clark*, 746 F.2d 572 (Pet. App. A5-A58).

JURISDICTION

The judgment of the court of appeals was entered on November 2, 1984, and a petition for rehearing was denied on February 5, 1985 (Pet. App. A91-A92). The petition for a writ of certiorari was filed on May 6, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners contend that they have sovereign rights and unextinguished aboriginal title to the Beaufort and Chukchi Seas of the Arctic Ocean out to a distance of at least 65 miles from the coast of Alaska. Their complaint alleged that they have exclusively occupied that area since time immemorial; that as a result of such continuous and exclusive occupancy they have title and sovereignty over the surface ice and water column of the Beaufort and Chukchi Seas as well as exclusive rights, title, ownership, dominion, and sovereign jurisdiction over the seabed of the Outer Continental Shelf (OCS);[1] that their rights of sovereignty and ownership in the Beaufort and Chukchi Seas and the underlying seabed have not been extinguished; and that the offshore oil and gas activities of the United States and the private respondents (a number of oil companies) under the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, infringe their tribal sovereignty, trespass upon their lands, take their property and liberty without due process, violate their civil rights, breach a trust responsibility owed to them by the United States, abridge their religious freedom, and constitute a civil conspiracy.

All respondents moved for judgment on the pleadings. Following extensive briefing and a hearing, the district court, treating the motions as ones for summary judgment, granted judgment for respondents on all claims. Pet. App. A59-A90. After describing this action and the history of prior litigation between the parties (*id.* at A62-A66), the district court adopted the government's position that petitioners' claims are foreclosed by this Court's decisions in

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[1]The OCS consists of the submerged lands lying seaward and outside the area appertaining the states under the Submerged Lands Act, 43 U.S.C. 1301 *et seq.* It generally comprises the submerged lands beyond three miles from the coastline of the states. 43 U.S.C. 1301; *United States* v. *Louisiana*, 363 U.S. 1 (1960).

United States v. *Maine*, 420 U.S. 515 (1975); *United States* v. *Texas*, 339 U.S. 707 (1950); *United States* v. *Louisiana*, 339 U.S. 699 (1950); and *United States* v. *California*, 332 U.S. 19 (1947), which recognized and confirmed the paramount rights of the United States in ocean areas lying seaward of the ordinary low water mark. The district court rejected petitioners' argument that the Court's paramountcy cases did no more than resolve the competing claims of the United States and the states and left open comparable claims advanced by Indians. The court stated (Pet. App. A68-A69):

> To accept the interpretation now urged by the Inupiat would be to ignore the underlying principle upon which the Supreme Court has placed reliance, that federal supremacy over the adjacent seas is an essential element of national sovereignty. I therefore conclude that claims of sovereign power over the oceans whether made by one of the several states in the Union or by the Inupiat or by any other native tribe is [*sic*] inconsistent with national sovereignty and must fail.

The district court also rejected petitioners' claims because "[a]ny exercise of external sovereignty by the Inupiat in the area of the outer continental shelf would be inconsistent with their status as members of the United States and hostile to the interests of the nation as a whole" (Pet. App. A79-A80).[2]

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[2]The district court further held that the United States has no trust responsibility to protect Inupiat claims of title and sovereignty in the ocean, noting that the "Inupiat have no property rights in the area claimed and no treaty, statute or executive order has been offered to support the claim of a trust relationship" (Pet. App. A81). The court also observed (*id.* at A82) that petitioners were collaterally estopped from relitigating their trust claim by the decision in *North Slope Borough* v. *Andrus*, 642 F.2d 589, 611-612 (D.C. Cir. 1980), which held, inter alia, that whatever the source of the United States' trust responsibility to the Inupiats with respect to oil and gas development in

2. The court of appeals affirmed the judgment of the district court, but it based its decision on a different rationale.[3] Petitioners' claim to aboriginal title and sovereignty over the Arctic Ocean was consolidated for purposes of argument with a similar claim raised in *People of the Village of Gambell* v. *Clark*, 746 F.2d 572 (1984). In that case, plaintiffs challenged the Secretary of the Interior's decision to conduct an OCS oil and gas lease sale in Norton Sound, off the western coast of Alaska. Plaintiffs contended that the Secretary's decision had been made in violation of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3120. Alternatively, plaintiffs contended that they possessed aboriginal title to substantial portions of the area proposed for leasing and that they had not consented to the leasing of the area purportedly owned, used, and occupied by them.

The court of appeals first disposed of the *Gambell* plaintiffs' aboriginal title claim (Pet. App. A9-A31). The court assumed without deciding that the plaintiffs had once possessed aboriginal rights to hunt and fish in the waters of Norton Sound (*id.* at A8, A50 n.1). The court concluded, however, that the Alaska Native Claims Settlement Act

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the Beaufort Sea, that responsibility had been fully satisfied. The court of appeals affirmed this ruling (Pet. App. A2), and petitioners have not pursued the issue in this Court. Finally, the district court rejected petitioners' religious freedom claim, concluding that it met neither of the two elements required by *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), and that allowance of the claim would "result in the creation of a vast religious sanctuary over the Arctic seas beyond the state's territorial waters," causing "serious Establishment Clause problems" (Pet. App. A84, A86). Petitioners did not pursue their religious freedom claim on appeal, and the court of appeals had no occasion to address it.

[3]In the district court, the government had argued in the alternative for dismissal of the complaint on the grounds ultimately relied upon by the court of appeals, but the district court's reliance on this Court's paramountcy cases made it unnecessary for that court to reach any of the government's several alternative grounds for dismissal.

(ANCSA), 43 U.S.C. 1601 *et seq.*, which extinguished "claims of aboriginal title in Alaska," 43 U.S.C. 1603(b), applied to the Outer Continental Shelf (Pet. App. A8). Following an extensive analysis of the language and legislative history of the extinguishment provisions of ANCSA (Pet. App. A8-A31), the court concluded that Congress used the phrase "in Alaska" in Section 4(b) of ANCSA "to mean the geographic region, including the contiguous continental shelf and the waters above it, and not merely the area within the strict legal boundaries of the State of Alaska" (Pet. App. A15).

This ruling in *Gambell* applied as well to petitioners' aboriginal title claims in the instant case, and the court of appeals accordingly affirmed the judgment of the district court for the reasons set forth in the *Gambell* opinion (Pet. App. A2).[4] In addition, the court of appeals agreed that petitioners' "general [breach of] trust claims" were barred by collateral estoppel (*id.* at A2-A3). Finally, the court rejected petitioners' claims based on international covenants (*id.* at A3-A4 (citations omitted)):

> Assuming these international understandings are applicable, [petitioners] point to no provision of either that could be interpreted as imposing upon the United

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[4]In *Gambell*, the court of appeals went on to give the same construction to the phrase "in Alaska" as used in ANILCA that it had found applicable to ANCSA (Pet. App. A33-A47). The court concluded that Title VIII of ANILCA, which deals with subsistence hunting and fishing by rural Alaskans, was intended to have the same geographic scope as ANCSA (Pet. App. A33-A34). The court noted that legislators debating ANILCA on occasion used the phrase "in Alaska" to refer to the OCS (Pet. App. A34-A35), and the court also observed that Title VIII of ANILCA was adopted to benefit Natives (as well as other rural residents of Alaska). Accordingly, the court gave the phrase "in Alaska" a broad construction that benefitted the Natives (Pet. App. A43-A45). No issue concerning the proper construction of ANILCA is involved in the present case.

> States a greater obligation to protect the subsistence culture of the Natives than that imposed upon the United States by federal domestic law—an obligation already satisfied. Nor have [petitioners] made any showing of a universal recognition of such a greater obligation that would be necessary to establish a claim based on the law of nations.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Moreover, petitioners' claim is barred by numerous additional grounds that the court of appeals found unnecessary to reach. Accordingly, further review is not warranted.

1. a. Petitioners' principal attack on the court of appeals' decision is that it failed to apply the canon of construction calling for the resolution of statutory ambiguities in favor of Native claims. See, *e.g.*, Pet. 28-31, 47-52. That claim clearly does not warrant review in this case. In the first place, the court of appeals' companion decision in *Gambell* expressly applied the very principle for which petitioners argue (Pet. App. A43-A45). Thus, there can be no contention that the court of appeals was unaware of the general rule of construction upon which petitioners base their arguments. Instead, the court merely recognized that in the instant case the evidence of congressional intent to extinguish petitioners' claims was too clear to be overridden by a general rule of construction. This Court as well has recognized that the canon favoring resolution of doubtful issues in the Natives' favor is not an absolute. See, *e.g.*, *DeCoteau* v. *District County Court*, 420 U.S. 425, 444-445 (1975). Here, as in *DeCoteau*, 420 U.S. at 445, the " 'face of the Act,' " its " 'surrounding circumstances,' " and the

" 'legislative history' " all compel the conclusion that petitioners' aboriginal rights to the Arctic Ocean, if any, were extinguished with the passage of ANCSA.

More importantly, petitioners ignore the fact that Congress made plain its intent that courts apply a different rule of construction to the extinguishment provisions of ANCSA. The Conference Report stated (S. Rep. 92-581, 92d Cong., 1st Sess. 40 (1971)):

> It is the clear and direct intent of the conference committee to extinguish *all* aboriginal claims and *all* aboriginal land titles, if any, of the Native people of Alaska and the language of settlement is to be broadly construed to eliminate such claims and titles as any basis for any form of direct or indirect challenge to land in Alaska.

Accordingly, there is no merit to petitioners' argument that the court of appeals applied an erroneous rule of construction in its analysis of their claim.

b. ANCSA was enacted to resolve the claims of Alaska Natives and to compensate them for relinquishment of their aboriginal rights, "if any." 43 U.S.C. 1603. In exchange for extinguishment, Congress gave the Natives almost $1 billion and 40 million acres of land, even though it is beyond dispute that Congress may extinguish aboriginal title without payment of *any* compensation. See, *e.g., Tee-Hit-Ton Indians* v. *United States,* 348 U.S. 272, 279 (1955). Against this backdrop, it is inconceivable that Congress could have meant to preserve the sweeping claims asserted by petitioners in this action. Section 4(b) of ANCSA, 43 U.S.C. 1603(b) (emphasis added), provides that "[a]ll aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, *including submerged land underneath all water areas, both inland and offshore,* and including any aboriginal hunting or fishing rights that may exist,

are hereby extinguished."[5] By this provision, Congress extinguished aboriginal title, if any, not only to the submerged lands of the territorial seas that are technically "in Alaska," but to the OCS as well.

Section 4(c) of ANCSA, 43 U.S.C. 1603(c), also extinguished aboriginal title to the OCS. That section provides that all claims against the United States "*based on* claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska * * *, are hereby extinguished." Under international law, the right to OCS resources belongs to the United States not on the basis of use or occupancy of the shelf or the seas above the shelf, but as an incident of the Nation's sovereignty over the contiguous coast. See Convention on the Continental Shelf, *done* Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578. Consequently, as a matter of law, ANCSA's extinguishment of aboriginal title to the coast—which petitioners do not contest—also extinguished

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[5]As the court of appeals noted (Pet. App. A21-A23), Section 4(b) of ANCSA was added to the bill that eventually passed Congress following a hearing at which a representative of the Western Oil and Gas Association expressed concern that the then-proposed language of extinguishment did not clearly encompass the OCS. In this regard, we note that petitioners' reproduction of the court of appeals' opinion omits a crucial portion of the hearing testimony relied upon by the court. The full portion of the opinion, which is reproduced in part at Pet. App. A22, actually provides as follows (746 F.2d at 577 (omitted material contained in second set of brackets; emphasis in original)):

> John Pickering * * * pointed out that some of the Native claims "purport to cover waters in addition to land areas" and "to effectuate a complete settlement, the claims should be extinguished as to water, as well as to land, areas." Mr. Pickering suggested this was true "for submerged areas beneath navigable waters in particular," and identified these as including "submerged areas beneath navigable waters [title over which was vested] in the State of Alaska under the grant made to it by the Submerged Lands Act (67 Stat. [29) as made applicable by the Statehood Act (72 Stat. 343), *or in the United States under the Outer Continental Shelf Lands Act* (67 Stat.] 462)."

aboriginal title, if any, to the OCS. This is so regardless of the fact that the OCS is not technically "in Alaska," because petitioners' claims to the OCS are unquestionably "based on" their extinguished claims to land and water areas within the geographic boundaries of Alaska.

2. In addition to the court of appeals' ruling that petitioners' claims were extinguished by ANCSA, it is clear, as the district court held, that petitioners' arguments are wholly incompatible with the paramountcy doctrine. Under that doctrine, ownership of the adjacent seabed and the natural resources therein appertain by virtue of the Constitution to the federal government as an essential element of national sovereignty. See, *e.g., United States* v. *Texas,* 339 U.S. 707, 717-718 (1950) (emphasis added):

> When Texas came into the Union, she ceased to be an independent nation. She then became a sister State on an "equal footing" with all the other States. That act concededly entailed a relinquishment of some of her sovereignty. The United States then took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like. In external affairs the United States became the sole and exclusive spokesman for the Nation. *We hold that as an incident to the transfer of that sovereignty any claim that Texas may have had to the marginal sea was relinquished to the United States.*

Assuming, arguendo, that petitioners at one time enjoyed sovereignty over and ownership of the Beaufort and Chukchi Seas, that sovereignty and ownership did not survive the acquisition of Alaska by the United States in 1867.[6] At that

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[6]The district court held that the Inupiats could not have acquired the rights claimed by petitioners prior to 1867, because "as late as 1876 the concept of territorial sovereignty over adjacent seas remained doubtful

time, Alaska became a part of this country, and ownership of the seabed and the resources therein was relinquished to the federal government. The paramountcy doctrine is every bit as applicable to petitioners' claims as it is to the claims of the states rejected by this Court. Federal paramountcy is an element of national sovereignty, and no subordinate domestic entity, be it a state or an Indian tribe, may interfere with that paramountcy. See, *e.g.*, *United States* v. *Louisiana*, 339 U.S. 699, 704 (1950); *United States* v. *California*, 332 U.S. 19, 29 (1947). It is, of course, a fundamental tenet of federal Indian law that tribes are not foreign states. *Cherokee Nation* v. *Georgia*, 30 U.S. (5 Pet.) 1, 16-20 (1831). Thus, tribes enjoy only so much sovereignty as the United States chooses to acknowledge. *Johnson* v. *McIntosh*, 21 U.S. (8 Wheat.) 543, 574 (1823). To the extent that any claim of Indian sovereignty is inconsistent with national sovereignty, therefore, it must fail of necessity, as a consequence of the Indians' being a part of our Union.

Significantly, the fact that this case involves the Nation's *external* sovereignty, *i.e.*, its standing as a member of the world community, distinguishes this case from earlier westward expansions of the United States' *land* territory. Petitioners' argument (Pet. 17-18) that because the United States acknowledged aboriginal title when it acquired new land territories it must do likewise in the ocean fails for the simple reason that there was no inconsistency between land-based aboriginal title and the United States' status as the sole external sovereign; the same cannot be said, of course, regarding the oceans. The United States has never deviated from the proposition that the Arctic is to be accorded the same high seas status as any other ocean, incapable of

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under international law" (Pet. App. A77, citing *United States* v. *California*, 332 U.S. 19, 31-33 (1947)). We agree with the district court's conclusion, but we need not address it because petitioners' claims are so clearly foreclosed by constitutional doctrine and federal Indian law.

occupation by anyone and fully subject to the principle of freedom of the high seas. See, *e.g.*, D. Pharand, *The Law of the Sea of the Arctic* 169-170 (1973); 62 Dep't of State Bulletin 610-611 (May 1970).[7] That determination is binding on petitioners.

Importantly, the paramountcy doctrine controls petitioners' claim of aboriginal title as well as their claim of sovereignty. In *United States* v. *Texas*, 339 U.S. at 719, the Court rejected Texas' attempt to separate *dominium* (ownership) from *imperium* (sovereignty). The Court stated (*ibid.*):

> It is said that * * * the sovereignty of the sea can be complete and unimpaired no matter if Texas owns the oil underlying it. Yet, * * * once low-water mark is passed the international domain is reached. Property rights must then be so subordinated to political rights as in substance to coalesce and unite in the national sovereign.

There can be no doubt that petitioners are *not* the national sovereign, and the paramountcy cases thus compel the conclusion that petitioners' claims to the Arctic Ocean are foreclosed as a matter of constitutional necessity.

3. There is yet a third reason why petitioners' claims are without merit. It is well settled that Congress may extinguish aboriginal title whenever it chooses. And while extinguishment is not to be lightly implied, it need not take any

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[7]Article 1 of the Convention on the High Seas, *done* Apr. 29, 1958, 13 U.S.T. 2314, T.I.A.S. No. 5200, to which the United States is a party, provides as follows: "The term 'high seas' means all parts of the sea that are not included in the territorial sea or in the internal waters of a State." There is absolutely no reason to believe, and there is nothing in the legislative history of the Convention that suggests, that the Beaufort and Chukchi Seas, and the Arctic Ocean, were not intended to be covered by the High Seas Convention.

particular form; extinguishment occurs whenever the acts of the sovereign are inconsistent with continued aboriginal use and occupancy. *United States* v. *Santa Fe Pacific R.R.*, 314 U.S. 339, 347, 354 (1941). Congress's passage of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*, was just such an exercise of sovereign power. The Act declared the continental shelf to be subject to the exclusive jurisdiction of the United States and to its power of disposition as therein provided (43 U.S.C. 1332); extended the laws of the United States to the subsoil and seabed of the Shelf and to development structures located thereon (43 U.S.C. 1333); and authorized the Secretary of the Interior to promulgate rules and regulations and otherwise provide for the management and development of the mineral resources of the Shelf (43 U.S.C. 1334). The Act also authorized the Secretary to issue leases and established parameters for some of the terms and conditions of the leases to be granted under the Act (43 U.S.C. 1337). Congress specifically declared that "mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions" of that Act (43 U.S.C. 1333(a)(1)). All funds received from development of those resources go into the miscellaneous receipts account of the Treasury for the benefit of the Nation (43 U.S.C. 1338).

The detailed and comprehensive scheme thus established by Congress was an exercise of complete dominion and control by the federal government over the natural resources of the OCS. Moreover, the scheme is, on its face, adverse to any claim by petitioners to sovereignty or ownership. All authorities under the Act are vested in the Secretary of the Interior and other federal officials. There is no provision for or recognition of the rights of petitioners or other Indian people in this exclusively federal scheme. Indeed, the Act repudiated the very sovereignty upon which petitioners rely to establish their right to the mineral resources of the OCS

by specifically disclaiming sovereignty and ownership of the waters above the shelf (43 U.S.C. 1332(2)). Accordingly, petitioners' aboriginal rights, if any, were completely extinguished by the passage of OCSLA.[8]

4. There is no merit to petitioners' argument (Pet. 52-54) that their claim is protected by international law. First, the International Covenant on Civil and Political Rights, U.N. G.A.O.R., 21st Sess., Supp. No. 16 (A/6316), at 52 (1966), upon which petitioners rely (Pet. 53), has never been ratified by the United States. Second, that document, and others like it, were never intended to create private rights of action enforceable in domestic courts. See, *e.g., Frolova* v. *Union of Soviet Socialist Republics,* 761 F.2d 370, 373-375 (7th Cir. 1985); *Tel-Oren* v. *Libyan Arab Republic,* 726 F.2d 774, 808-810 (D.C. Cir. 1984) (Bork, J., concurring), cert. denied, No. 83-2052 (Feb. 25, 1985). Finally, as the court of appeals observed (Pet. App. A3-A4), the International Covenant, even if applicable, imposes no greater obligations on the United States to protect the interests of petitioners than are already imposed by domestic law, and it has been conclusively resolved through exhaustive litigation that those obligations have been fully satisfied. *California* v. *Watt,* 668 F.2d 1290, 1324-1325 (D.C. Cir. 1981); *North*

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[8]Petitioners argue (Pet. 25-26 n.7) that the Act's savings clause, 43 U.S.C. 1342, expressly preserved their claims. But the clause protects only prior existing *rights* in the OCS, and it is clearly settled that aboriginal title is not a "right" against the United States. *Tee-Hit-Ton Indians* v. *United States,* 348 U.S. at 279. In addition, the legislative history of the savings clause indicates that Congress's sole purpose was to avoid affecting, one way or the other, pending claims under the Mineral Leasing Act that were later resolved in *Justheim* v. *McKay,* 229 F.2d 29 (D.C. Cir. 1956). See S. Rep. 133, 83d Cong., 1st Sess. 17, 21 (1953); S. Rep. 411, 83d Cong., 1st Sess. 26, 37 (1953); *Outer Continental Shelf: Hearings on S.1901 Before the Senate Comm. on Interior and Insular Affairs,* 83d Cong., 1st Sess. 704 (1953).

Slope Borough v. *Andrus*, 642 F.2d 589, 611-613 (D.C. Cir. 1980).[9]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 1985

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[9]In any event, petitioners' claim (Pet. 54) that the United States, by developing OCS resources, is taking action that "knowingly furthers the extinction of a Native people" is grossly exaggerated. Congress has enacted a host of statutes that include provisions to protect petitioners' environment and their subsistence livelihood. See, *e.g.*, Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*; Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.*; International Convention for the Regulation of Whaling, Dec. 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849. If petitioners believe that these statutes are being violated, they are free to bring suit challenging particular governmental actions as, indeed, they have done in the past. But any such claims have no bearing on this lawsuit, except to underscore the complete inapplicability of petitioners' sweeping allegations under international law.

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No. 84-1801

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

INUPIAT COMMUNITY OF THE ARCTIC SLOPE, *et al.*,
Petitioners,

v.

THE UNITED STATES OF AMERICA, *et al.*,
Respondents.

BRIEF IN OPPOSITION OF RESPONDENTS AMOCO PRODUCTION COMPANY, *ET AL.*

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QUESTIONS PRESENTED

1. Did the district court err in holding that the Inupiat Eskimos' claim of sovereignty over and exclusive rights to the high seas and outer continental shelf in the Beaufort and Chukchi Seas is foreclosed by the constitutional doctrine of federal paramountcy in maritime areas?

2. Did the court below err in holding that the Alaska Native Claims Settlement Act extinguished all the claims of Alaska Natives based on aboriginal title, including claims to the high seas and outer continental shelf?

3. Did the court below err in holding that the United States has fully satisfied its obligation to protect the subsistence culture of the Inupiats?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-1801

INUPIAT COMMUNITY OF THE ARCTIC SLOPE, *et al.*,
Petitioners,

v.

THE UNITED STATES OF AMERICA, *et al.*,
Respondents.

BRIEF IN OPPOSITION OF RESPONDENTS AMOCO PRODUCTION COMPANY, *ET AL.*

STATEMENT OF THE CASE

This brief in opposition is submitted on behalf of respondents Amoco Production Company, *et al.*[1]

Petitioners seek unspecified damages and an order enjoining oil development in the Beaufort and Chukchi Seas on the theory that they possess aboriginal title to those ocean waters and to the underlying outer continental shelf (OCS). This suit is the latest in a series

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[1] The corporate respondents, and their affiliates as required by Rule 28.1, are listed in Appendix A.

of actions brought by the Arctic Slope Natives to block economic development in northern Alaska and the adjacent seas and to exact damages for the activities of non-Natives in those areas.

In 1971, however, Congress passed the Alaska Native Claims Settlement Act[2] (ANCSA) to resolve the claims of Alaska Natives and to compensate them for relinquishment of their aboriginal rights, "if any." 43 U.S.C. § 1603. Under that Act the Alaska Natives received more than 40 million acres and almost $1 billion. *See* §§ 1605, 1613. Despite this unprecedented settlement,[3] the Inupiats have since brought a battery of lawsuits seeking to derive still additional benefits from their claims of aboriginal title.

First the Inupiats (and the United States acting as trustee) filed suit claiming that oil development activities on the Arctic Slope prior to the Settlement Act were in trespass of Native rights. That suit focused primarily on land areas, but the Natives also claimed that the migratory and feeding patterns of sea mammals and fish in the Beaufort Sea had been disturbed. The Inupiats' trespass claims were held to have been extinguished by the Settlement Act. *United States* v. *Atlantic Richfield Co.*, 435 F. Supp 1009 (D. Alaska 1977), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 888 (1980).

The Inupiats then sued in the Court of Claims, seeking additional compensation for the extinguishment

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[2] 85 Stat. 688 (1971), *as amended*, 43 U.S.C. §§ 1601-26.

[3] No compensation whatever was constitutionally required. *E.g.*, Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 279 (1955).

beyond that provided in the Settlement Act. Again the primary focus was on land claims, but damages were also sought for alleged interference with whaling and fishing. The court rejected the Inupiats' argument that the Settlement Act's extinguishment was an unconstitutional taking. *Inupiat Community of Arctic Slope* v. *United States,* 680 F.2d 122 (Ct. Cl.), *cert. denied,* 459 U.S. 969 (1982).

Further, and involving part of the same offshore area at issue here, the Natives sued to enjoin the 1979 Beaufort Sea joint federal-state lease sale.[4] It was claimed that the sale and consequent environmental damage to fishing and whaling areas would violate a federal trust responsibility, environmental statutes, and the Outer Continental Shelf Lands Act (OCSLA), 67 Stat. 462 (1953), *as amended,* 43 U.S.C. §§ 1331-1343. The Court of Appeals for the District of Columbia Circuit concluded that the United States had complied with all legal requirements in preparing and conducting that sale. *North Slope Borough* v. *Andrus,* 642 F.2d 589 (D.C. Cir. 1980). The court found that lease stipulations and statutory prescriptions ensured that "any future development in the Beaufort Sea will be highly studied and conscientious," that the Natives' interests had been carefully evaluated together with other public-interest considerations, and that de-

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[4] The 1979 joint sale included acreage claimed by both the United States and the State of Alaska. Respondents Bill Sheffield, Governor of Alaska, and Esther C. Wunnicke, Alaska Commissioner of Natural Resources, were named as defendants below because of Alaska's claim to the disputed acreage. That dispute is the subject of United States v. Alaska, No. 84 Original in this Court, currently pending before a Special Master.

velopment plans had been modified to avoid undue damage to Native interests. *Id.* at 606, 612.[5]

This suit, filed in January 1981, was the next step. It duplicates *Andrus, supra,* in that it too was brought in response to the 1979 Beaufort Sea lease sale. Petition at 6. The complaint alleges that the Natives of the Arctic Slope constitute a sovereign Indian tribe which once enjoyed broad aboriginal rights of sovereignty and ownership, not only over the Arctic Slope but also over wide areas of the Beaufort and Chukchi Seas. Although acknowledging that the Settlement Act extinguished the Natives' aboriginal claims "in Alaska," 43 U.S.C. § 1603, the Inupiats allege that the Act did not affect the claims in this suit because waters outside the three-mile belt are not in Alaska. Thus the Inupiats contend that they still enjoy exclusive rights and sovereignty over those large portions of the Arctic Ocean.

The sweep of the Inupiats' claim is illustrated by their prayer for relief. In addition to unspecified damages, the Inupiats seek a declaration that they possess ownership and sovereign jurisdiction over the Beaufort and Chukchi Seas beyond the three-mile limit to a distance of at least 65 miles. This claim includes the surface ice, water column, seabed, and all oil and gas contained in the subsoil. Further, the Inupiats seek an injunction prohibiting any defendant, including the United States itself, from interfering in any way with these alleged exclusive rights, and the court

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[5] The Alaska Supreme Court reached similar conclusions in a parallel challenge to the state portion of the 1979 joint sale. *See* Hammond v. North Slope Borough, 645 P.2d 750, 759-761, 763 (Alaska 1982).

is asked to order defendants and their agents to remove themselves from the Beaufort and Chukchi Seas and to stay out of that area within the "sovereign jurisdiction of the Inupiat people." Compl. ¶¶ 44-51.

Respondents moved for judgment on the pleadings. After extensive briefing and oral argument, the district court issued an opinion and entered judgment for respondents. 548 F. Supp. 182 (D. Alaska 1982).

The district court held that the Inupiats' ownership and sovereignty claims were foreclosed by a line of this Court's decisions beginning with *United States* v. *California,* 332 U.S. 19 (1947), which establish as a matter of constitutional law that the United States has paramount rights over ocean areas lying seaward of the low-water mark. This Court had made clear that federal supremacy over the adjacent seas is an essential element of national sovereignty and that competing claims must fail. The district court observed that the dependent status of Indian tribes, *see United States* v. *Wheeler,* 435 U.S. 313 (1978), made it particularly inappropriate for a Native group to claim sovereign rights in offshore areas contrary to the rights of the United States under the paramountcy cases. 548 F. Supp. at 187.

The district court also observed that the principle of exclusive federal sovereignty over offshore areas is not an abstract legal doctrine. Congress has legislated extensively on the subject of the adjacent oceans and the continental shelf. Detailed environmental statutes, including several dealing specifically with Native subsistence use, have been enacted and implemented. Also, federal legislation divides authority over the continental shelf between the state and federal governments,

reserving for the federal government complete and exclusive power over areas outside the three-mile limit and providing a detailed program for oil and gas development of the OCS. Thus, the district court applied the settled law of this Court in holding that petitioners' sweeping claims of common-law rights must give way to the "dominant interests of the national sovereign" in ocean waters and the OCS. *Id.* at 188.

The court of appeals unanimously affirmed. 746 F.2d 570 (9th Cir. 1984). It adopted respondents' argument that ANCSA extinguished any aboriginal rights petitioners may have had and thus did not consider the alternative defense of federal paramountcy. The court provided the reasoning for this holding in the companion case of *People of Village of Gambell* v. *Clark,* 746 F.2d 572 (9th Cir. 1984).

The court of appeals found that various provisions of ANCSA and its legislative history clearly demonstrate Congress' intent to extinguish petitioners' claims. *Id.* at 574-79. In reaching this conclusion the court focused on the language of section 4(b) of the Act, 43 U.S.C. § 1603(b)—one of three overlapping extinguishment provisions in § 1603. In addition, the court's result rested upon "the mandate from Congress to construe the [extinguishment] provision broadly to extinguish all aboriginal claims, and the legislative history indicating a specific purpose to extinguish aborginal hunting and fishing rights, including those in coastal waters, and specifically in outer-continental-shelf waters." *Village of Gambell,* 746 F.2d at 579.

Even aside from the court's reliance upon section 4(b), the court's interpretation of ANCSA was clearly

compelled by the language of section 4(c) of the Act, 43 U.S.C. § 1603(c): "All claims . . . that are based on aboriginal right, title, use, or occupancy of land or water areas in Alaska . . . are hereby extinguished." Petitioners' claims to own the offshore oceans are encompassed by this language, for those claims are based on claims to lands in Alaska. Thus, the court of appeals was correct in concluding that petitioners' claims were extinguished by ANCSA.

The court of appeals also rejected petitioners' claim founded on international law. On appeal, petitioners for the first time asserted that certain international agreements gave them a federal common-law right to control ocean areas they use for subsistence purposes. The court of appeals held that the numerous federal statutes designed to protect the subsistence culture of the Alaska Natives fully satisfied any applicable international-law obligations. 746 F.2d at 571-72.

REASONS FOR DENYING THE WRIT

A. The District Court Correctly Applied the Settled Constitutional Doctrine of Federal Paramountcy over Offshore Areas.

The Court has repeatedly held that under the Constitution the federal government has the exclusive authority to govern and to develop the OCS. Moreover, Congress has implemented that authority in a manner leaving no doubt that the Inupiats' claims in this suit are wholly inconsistent with federal exercise of those sovereign powers. Similarly, it is well established that the aboriginal right of occupancy does not extend to offshore areas. Thus, the district court's holding that federal paramountcy over the high seas forecloses

petitioners' aboriginal-title claims to Arctic seas raises no federal questions that the Court has not already settled.

The Court first addressed the issue of offshore rights in a dispute between the United States and California over the right to control the exploitation of mineral resources lying within the three-mile belt of territorial waters. *California,* 332 U.S. at 29. The Court held that "the Federal Government rather than the state has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under the water area, including oil." *Id.* at 38-39. Rejecting claims by the state based on its equal footing with the original thirteen states that had succeeded to rights of the English crown, and sharply limiting traditional doctrine that states owned the beds of navigable waters within their boundaries, the Court held that such domestic precedents and concerns cease at the ocean's edge: "protection and control of [the three-mile belt] has been and is a function of national external sovereignty." *Id.* at 34. Thus the role of the United States as external sovereign, and particularly its responsibilities for foreign affairs and national defense, were held to entail both exclusive political power and the exclusive right to dispose of natural resources as soon as the ocean's edge is reached.[6]

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[6] The Court held, alternatively, that as an historical matter it had not been established that international law permitted sovereignty and ownership of offshore waters until quite recently. 332 U.S. at 31-33. The district court below correctly relied on this holding as an alternative ground for rejecting petitioners' claims. 548 F. Supp. at 187.

Three years later the Court extended the *California* doctrine to the OCS. *United States* v. *Louisiana,* 339 U.S. 699 (1950). The Court's reasoning is equally compelling in the present case:

> "If, as we held in California's case, the three-mile belt is in the domain of the Nation rather than that of the separate States, it follows *a fortiori* that the ocean beyond that limit also is. The ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea. Certainly it is not less so." *Id.* at 705.

In *United States* v. *Texas,* 339 U.S. 707 (1950), Texas argued that its position was distinguishable because, prior to statehood, it had been an independent republic with full sovereignty over the adjacent OCS. While accepting the premise of this argument, the Court nevertheless held that the very acquisition of statehood served to surrender Texas' external sovereignty and thereby to terminate its claims to the seabed. *Id.* at 718.[7]

California, Louisiana, and *Texas* thus established that the federal government possesses exclusive authority under the Constitution to whatever rights

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[7] The Court also rejected Texas' argument that federal paramountcy could coexist with a subordinate entity's property rights and need not entail ownership of mineral resources. *Id.* at 719. Thus, the district court below correctly held that all of petitioners' alleged aboriginal property rights had to fall unless the Inupiats proved a right of sovereignty superior to the federal government's. 548 F. Supp. at 186 n.3.

could be exercised over offshore areas. *United States* v. *Maine,* 420 U.S. 515 (1975), cemented this rule. There the Court rejected a claim by the Atlantic states based on their sovereignty and ownership of adjacent waters during the colonial period. Again the Court held that whatever the states may have owned was extinguished, as a matter of constitutional law, by the supervening external sovereignty of the federal government:

> "[T]his Court's cases . . . hold that as a matter of 'purely legal principle . . . the Constitution . . . allotted to the federal government jurisdiction over foreign commerce, foreign affairs and national defense' and that 'it necessarily follows, as a matter of constitutional law, that as attributes of these external sovereign powers the federal government has paramount rights in the marginal sea.' . . .
>
> "*United States* v. *Texas* unmistakably declares this constitutional proposition." 420 U.S. at 522-23.

The Court declined "to re-examine the constitutional underpinnings of the *California* case and of those cases which followed and explicated the rule that paramount rights to the offshore seabed inhere in the Federal Government as an incident of national sovereignty." *Id.* at 524.

Because of the Court's unshakable adherence to the constitutional principle of federal paramountcy in offshore areas, the district court below correctly held that petitioners' competing claims were untenable as a matter of law. Petitioners' claims are essentially iden-

tical to those advanced by the states and repeatedly rejected by the Court over the past forty years.[8]

In the *California* line of decisions, the Court refused to extend to offshore areas the established rule of state sovereignty over submerged lands under inland navigable waters, because of the federal government's unique constitutional authority over offshore areas. *California,* 332 U.S. at 36. Similarly, the Inupiats seek to transplant the doctrine of aboriginal title from onshore lands to offshore areas, "a matter of national concern." *Id.* California's right to submerged lands stopped at the seashore, and so must the Inupiats'.

Equally unavailing is the Inupiats' argument that the extension of federal sovereignty to new areas is subject to prior aboriginal claims. The argument is essentially that made by Texas and the Atlantic states: that their rights to the OCS predated their association with the United States and thus survived statehood. Yet in *Texas* and *Maine* the Court ruled unequivocally that such rights were extinguished when those states joined the Union, by virtue of paramount federal sovereignty over ocean areas. The Court held that, "as an incident to the transfer of that [external] sovereignty" at the time of statehood, "any claim that [a coastal state] may have had to the marginal sea was

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[8] In fact, the only real difference is that the Inupiats' claims have a lower constitutional status than do those of the states. *Compare* Montana v. United States, 450 U.S. 544, 563-64 (1981) (by their incorporation into the United States, Indian tribes underwent an "implicit divestiture of sovereignty," such that they lost authority over relations with non-members of the tribe except so far as affirmatively authorized by Congress) *with* U.S. Const. Amend. X.

relinquished to the United States." *Texas,* 339 U.S. at 718. Just as the states lost their external sovereignty, so did Indian tribes when they became domestic entities under United States law. The federal government assumed any prior jurisdiction "over foreign commerce, foreign affairs and national defense," and "as attributes of these external sovereign powers the federal government has paramount rights in the marginal sea." *See Maine,* 420 U.S. at 522-23 (quoting the Special Master).

Petitioners also attempt to avoid the federal paramountcy doctrine by invoking various congressional enactments which recognize, in various contexts, preexisting rights which individuals may have had to offshore areas. Petition at 24-26. No doubt Congress may, by statute, grant certain rights to offshore areas or preserve prior rights at the time when an offshore area is brought under United States jurisdiction. But no such grant or reservation of rights, even as to territorial waters, was included in the Treaty of Cession of Alaska, 15 Stat. 539 (1867), and the Inupiats thus cannot claim that any rights in their favor were recognized or preserved.[9]

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[9] The Inupiats also cite, Petition at 25 n.7, the savings clause contained both in the 1953 Submerged Lands Act and in OCSLA. 43 U.S.C. §§ 1315, 1342. But those statutes substantially post-dated Alaska's becoming a United States territory, the event which terminated any Inupiat claims to the offshore by virtue of the Constitution itself. Further, the savings provisions would be inapplicable in any event. It is clear from the legislative history that the savings clause was added to the Submerged Lands Act specifically to protect the rights "if any" of persons with pending lease claims under the Mineral Leasing Act, *see* S. Rep. No. 133, 83d Cong., 1st Sess. 17,

As the district court held, the only reasonable interpretation of the detailed congressional attention given offshore areas is that it represents proof of the federal government's paramount constitutional authority, not proof against it. 548 F. Supp. at 187; *see also Maine,* 420 U.S. at 524. For example, when enacting OCSLA in 1953 Congress explicitly sought " 'to assert the exclusive jurisdiction and control of the Federal Government of the United States over the seabed and subsoil of the outer Continental Shelf, and to provide for the development of its vast mineral resources.' S. Rep. No. 411, 83d Cong., 1st Sess. 2 (1953)." *See Gulf Offshore Co.* v. *Mobil Oil Corp.,* 453 U.S. 473, 479 n.7 (1981). Congress declared the OCS to be subject to the exclusive jurisdiction of the United States and to the power of disposition "as provided in this Act," § 3(a), 67 Stat. 462 (1953), current version at 43 U.S.C. § 1332(a), and made it clear that development of the OCS was to occur exclusively under the terms of that statute.[10] Any supposed intent to recognize Native occupancy rights is inconsistent with this

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21 (1953); 99 Cong. Rec. 2701-02 (1953) (Committee chairman and floor manager's explanation), and had no application to aboriginal claims. The identical provision was then included in OCSLA for the sake of uniformity, at the request of the Justice Department. *See* S. Rep. No. 411, 83d Cong., 1st Sess. 31 (1953) (letter from Assistant Attorney General J. Lee Rankin).

[10] OCSLA §§ 2(c), 3(a), 4(a), current versions at 43 U.S.C. §§ 1331(c), 1332(1), 1333(a). Leasing procedures were established, and the laws of the United States were extended to the shelf's seabed and to development structures, subject to the proviso that leases may be issued "only under the provisions of this [Act]." § 4(a)(1), current version at 43 U.S.C. § 1333(a)(1).

fundamental assertion of exclusive federal administration and control.[11]

In addition to OCSLA, Congress has enacted other statutes concerning the water areas adjacent to the United States. Some accord Native groups special rights; others do not. In none of them is there any

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[11] Native interests have, of course, not been ignored. In 1978, when Congress extensively revised the leasing and exploration provisions of the 1953 statute, Outer Continental Shelf Lands Act Amendments of 1978, 92 Stat. 629, it required careful consideration of environmental consequences. *See* 43 U.S.C. §§ 1332, 1334-35, 1801-02. The National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, and a panoply of other environmental statutes and regulations apply to OCS activities. Given the Native interest in subsistence hunting, the United States carefully structured the 1979 Beaufort Sea lease sale to take account of that interest, and the government remains under a continuing obligation to regulate development of the Arctic OCS with a mind to Native, as well as other, considerations. *See North Slope Borough* v. *Andrus*, 642 F.2d 589 (D.C. Cir. 1980). But Congress did not intend the concerns of environmental protection and Native culture to be "transformed into a veto for any one particular set of interests which would halt the Secretary's delegated decisionmaking." *Id.* at 613.

The court of appeals held in *Village of Gambell, supra*, that Congress had provided Native subsistence activity on the OCS with still-further protection through section 810 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2472 (1980), 16 U.S.C. § 3120(a). Section 810 provides that, before permitting any use, occupancy or disposition of public lands, a federal agency must evaluate the "effect of such [action] on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy or disposition of public lands needed for subsistence purposes." If a significant restriction of subsistence uses would result, the agency must give notice, hold hearings, and make statutory findings before proceeding with the proposed action.

indication that common-law doctrines regarding Native use and occupancy of land areas were to be made applicable to the high seas or to the OCS. In the Fishery Conservation and Management Act of 1976,[12] for example, Congress provided for fishery conservation zones extending over the OCS up to 200 miles from United States shores. Only Native *treaty* fishing rights were accorded special recognition. 16 U.S.C. § 1853(a)(2). The Marine Mammal Protection Act provides an exemption from its prohibitions for Native subsistence whaling in the Arctic Ocean but confers no other rights. 16 U.S.C. § 1371(b). The district court correctly concluded that "[t]he necessary implication is that Congress intended to permit use by Alaska natives of subsistence rights only to the extent authorized." 548 F. Supp. at 187.

Finally, petitioners assert that the district court's "holding represented an extraordinary departure from principles of Federal Indian law" developed by this court over two centuries. This position is unsupportable. Petitioners were unable to find a single decision of this Court, or any federal court, recognizing an aboriginal "right of occupancy" over ocean waters.[13]

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[12] 90 Stat. 331, 16 U.S.C. §§ 1801-82.

[13] The three decisions petitioners cite, Petition at 21 n.6, did not recognize any such aboriginal right. Alaska Pacific Fisheries v. United States, 248 U.S. 78 (1918), and Metlakatla Indian Community v. Egan, 369 U.S. 45 (1962), both involved a group of Indians who had moved to the area of dispute in 1887 and who asserted statutory, not aboriginal, rights. Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658, 662 (1979), concerned "the character of [an Indian] treaty right to take fish."

Petitioners' alleged authorities, Petition at 21 n.5, for the prop-

Cf. County of Oneida, N.Y. v. *Oneida Indian Nation of New York State, (Oneida II),* 105 S. Ct. 1245, 1251-52 (1985) (noting that Indian-law principles entitle natives to exclusive possession of "lands" inhabited from time immemorial).

There is no authority for petitioners' federal common-law claim[14] because aboriginal title cannot by its nature reach the high seas.[15] Navigable waters are not subject to private ownership. *United States* v. *Chandler-Dunbar Water Power Co.,* 229 U.S. 53 (1913).[16]

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osition that Native occupancy rights extend to inland waters are also inapposite. For example, Oneida Tribe of Indians of Wisconsin v. United States, 165 Ct. Cl. 487, *cert. denied,* 379 U.S. 946 (1964), concerned Indian timber rights and not Indian rights over inland waters.

[14] Claims of aboriginal title fall within "the exclusive province of federal law." *Oneida II,* 105 S. Ct. at 1251 (citation omitted).

[15] Interior Solicitor Margold's opinion to the contrary in Aboriginal Fishing Rights in Alaska, 57 Interior Dec. 461 (1941), never binding, has long since been overruled by the paramountcy cases. Further, the Solicitor's opinion rested on the proposition that "extinguishment of Indian possessory rights, without the consent of or compensation to the Indians affected, is forbidden by the Fifth Amendment," 57 Interior Dec. at 468, which is manifestly incorrect. *E.g.,* Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955).

[16] The rule was not disturbed in Kaiser Aetna v. United States, 444 U.S. 164 (1979). The Court held that, although a privately dredged fishpond had become "navigable" for purposes of congressional regulatory powers, the federal government could not create a public right of access without paying just compensation to its owners. The Court distinguished prior precedent by noting that the pond was "not the sort of 'great navigable stream' that

Aboriginal-title claims to lands under navigable waters are also precluded. *Montana* v. *United States*, 450 U.S. 544, 550-51 (1981); *United States* v. *Holt State Bank*, 270 U.S. 49 (1926). Since petitioners concede that aboriginal rights do not arise from treaties or statutes, their discussion of such sources cannot conceal the baselessness of their aboriginal-rights claims. It is petitioners' position, therefore, and not the district court's holding that radically departs from all Indian law precedents.

B. Petitioners' Aboriginal-Title Claims Were Extinguished by ANCSA.

Since, as demonstrated, no aboriginal claims to the high seas and OCS can succeed because of the federal-paramountcy doctrine, no showing that such claims have been extinguished by Congress is necessary to support the result below. However, the court of appeals' holding that any aboriginal claims of petitioners were extinguished by ANCSA is compelled by the language and legislative history of the Act. Accord-

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this Court has previously recognized as being '[incapable] of private ownership.' " *Id.* at 179.

The early Hawaii cases cited in the Petition at 22—Carter v. Hawaii, 200 U.S. 255 (1906), and Damon v. Hawaii, 194 U.S. 154 (1904)—lead to no different conclusions. In the first place, the right to fish—not exclusive possession—was at stake. Moreover, the basis for the asserted right was statutory, not aboriginal. Under the laws of the Republic of Hawaii, the right to fish in navigable waters could vest in private parties, and Congress made United States rights expressly subject to vested rights under Hawaiian law. *Carter* and *Damon* "are of no help" to a plaintiff alleging "nothing but immemorial use as the basis of its title." Tee-Hit-Ton Indians v. United States, 132 F. Supp. 695, 697 (Ct. Cl. 1955).

ingly, the questions of statutory construction presented by this case do not warrant this Court's attention.

The court of appeals recognized that this Court's established canons of construction regarding Indian matters controlled its interpretation of ANCSA. *Village of Gambell,* 746 F.2d at 574. The Ninth Circuit's decision, therefore, raises no challenge to the rule that "congressional intent to extinguish Indian title must be 'plain and unambiguous.'" *Oneida II,* 105 S. Ct. at 1258 (quoting *United States* v. *Santa Fe Pacific Railroad Co.,* 314 U.S. 339, 346 (1941)).

This standard might ordinarily present some difficulty for a defendant where the aboriginal claim at issue is so implausible and unprecedented that it must honestly be doubted that Congress had ever conceived of the claim or, if it had, thought it worthy of legislative attention. Still, in the present case the implausibility of the Inupiats' claims to the Arctic Ocean is no obstacle. This is because Congress has stated in "plain and unambiguous" terms that the aboriginal claims of Alaska's Natives should no longer be a source of endless and divisive litigation.

The starting point in this case, as in every case involving statutory construction, is the language of the statute itself. *See, e.g., Blum* v. *Stenson,* 104 S. Ct. 1541, 1548 (1984). As the court of appeals observed, the goal of avoiding litigation by extinguishing all Alaska Native aboriginal titles was made explicit in the Act's Declaration of Policy: "[T]here is an immediate need for a fair and just settlement of *all* claims by Natives . . . based on aboriginal land claims" and "the settlement should be accomplished rapidly,

with certainty, [and] . . . *without litigation* . . .." 43 U.S.C. § 1601(a), (b) (emphasis added), quoted in 746 F.2d at 575.

The Inupiats, nevertheless, claim that ANCSA did not affect Native claims to areas outside the three-mile seaward boundary of Alaska, pointing out that Congress used the term "in Alaska" in the extinguishment provisions of the Settlement Act, 43 U.S.C. § 1603. This argument might be persuasive if, as petitioners assert, ANCSA's extinguishment provisions applied only "'in Alaska,' and nowhere else." Petition at 29-30. But Congress did not write the statute so narrowly.

Although section 4(b) expressly addresses only claims "in Alaska," the broader language of section 4(c) clearly reaches the aboriginal claims asserted in this suit. Section 4(c) extinguishes "[a]ll claims . . . that are *based on* claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska . . .." 43 U.S.C. § 1603(c) (emphasis added). Thus the section extinguished claims based on aboriginal-title claims in Alaska "in the sense that the past or present existence of aboriginal title is an element of the claims." *United States* v. *Atlantic Richfield Co., supra,* 612 F.2d at 1135. In the instant case, whatever claims the Inupiats have to the OCS and water areas adjacent to Alaska are "based on" claims of use and occupancy of the Alaska shores and coastal waters within Alaska, and were therefore extinguished by section 4(c).

Petitioners explicitly concede that the "factual basis" for their claim rests on the allegations that they "treat the [sea] ice as a mere extension of the

land" and "recognizes no distinctions between the two." Petition at 5-6. The Inupiats' complaint also forthrightly admits that the claim to offshore areas is "based on" the Natives' occupation of North Slope land. For example, paragraph 8 of the complaint alleges continuous Native occupation of "[t]he Arctic Slope of Alaska and *appurtenant* areas of the Beaufort and Chukchi Seas" since time immemorial (emphasis added).[17] The complaint further alleges that the Inupiats' "range broadly on the Arctic slope, including the marine areas," in pursuit of fish and game. Compl. § 8. The Natives' claims deriving from alleged activity on land in Alaska and in the three-mile coastal belt are essential elements of the Inupiats' claims of dominion and ownership of the areas outside the three-mile belt.

This point goes beyond petitioners' admissions. Except in the case of a sovereign grant (not applicable here), rights in or to water areas cannot be acquired in the absence of rights to the adjacent land. Any water rights are "based on" land rights, in the sense that the water claims "require as an essential element of proof a showing of aboriginal use and occupancy at some time in the past" of the adjacent land. *United States* v. *Atlantic Richfield Co., supra,* 435 F. Supp. at 1025-26. The obviousness of the point is brought home by reading through the Inupiats' complaint and striking out any reference to use or occupancy of water or land areas "in Alaska." Stripped of its reli-

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[17] Before this Court petitioners similarly allege continuous "use of the North Slope of Alaska and adjacent marine areas." Petition at 4.

ance on Alaska aboriginal claims, the complaint is preposterous on its face.[18]

The broad language of section 4(c) of ANCSA embraces land claims in Alaska *and* all other claims, without geographical limitation, that are based on those land claims. Congress thus plainly and unambiguously stated its intention that all claims based on aboriginal title, including claims to appurtenant maritime areas, be extinguished.

The legislative history of ANCSA confirms the soundness of the result below. The Inupiats' claim challenges the fundamental purpose of the Settlement Act: to resolve all claims of Alaska Natives without litigation. *See* 43 U.S.C. § 1601(a)(b) (quoted above). As the court of appeals observed, "Congress repeatedly enjoined those who were to implement the statute to interpret the extinguishment section broadly to accomplish a complete and final settlement of aboriginal

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[18] The relationship between land claims and claims to the OCS has even become engrained in international law. The Convention on the Continental Shelf provides: "The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources." Convention on the Continental Shelf, Art. 2(1), *done* April 29, 1958, 15 U.S.T. 471, 473, T.I.A.S. No. 5578.

In the *North Sea Continental Shelf Cases,* the International Court of Justice explained:

> "What confers the *ipso jure* title which international law attributes to the coastal State in respect of its continental shelf, is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already has dominion, — in the sense that, although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea." 1969 I.C.J. 3, 31.

claims and avoid further litigation of such claims." 746 F.2d at 575 (footnote omitted). Congress' intent[19] to extinguish every conceivable claim that might be asserted by the Native people was clearly stated:

> "Section 4 extinguishes all aboriginal titles in Alaska, and all claims based thereon",

and

> "The section extinguishing aboriginal titles and claims based on aboriginal title is intended to be applied broadly, and to bar any further litigation based on such claims of title."

H. R. Rep. No. 523, 92nd Cong., 1st Sess. 6, 8, *reprinted in* 1971 U.S. Code Cong. & Ad. News 2196, 2198; *see also* S. Rep. No. 581, 92nd Cong., 1st Sess. 40 (1971) (Conference Report) ("It is the clear and direct intent of the conference committee to extinguish *all* aboriginal claims and *all* aboriginal land titles . . . .") (emphasis in original).

This case presents striking similarities to *Oregon Dept. of Fish & Wildlife* v. *Klamath Indian Tribe,* 53 U.S.L.W. 5106, 5111 (U.S. July 2, 1985), where an Indian treaty "contained a broad and unequivocal conveyance of the Tribe's title to the land and a surrender of *'all* their claim, *right,* title, and interest *in and to'*

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[19] Contrary to petitioners' assertions, Petition at 51-52, the Natives were aware that Congress intended the Settlement Act to settle all their claims based on aboriginal title. See Alaska Native Land Claims: Hearings on S. 1830 Before the Senate Comm. on Interior and Insular Affairs, 91st Cong., 1st Sess. 300-01 (1969) (statement of former Justice Arthur Goldberg, attorney for the Alaska Federation of Natives) ("The position that the Natives have taken is that they are prepared for an extinguishment of anything that is based upon aboriginal title.").

that portion of the reservation." The Court held that, "in the absence of any language reserving any specific rights in the ceded lands, the normal construction of the words used . . . unquestionably would encompass any special right to use the ceded lands for hunting and fishing." *Id.* at 5111. "Thus, even though 'legal ambiguities are resolved to the benefit of the Indians,' . . . courts cannot ignore plain language that, viewed in historical context and given a 'fair appraisal,' . . . clearly runs counter to a Tribe's later claims." *Id.* at 5112.

This case does not present any substantial question of statutory interpretation. The language of ANCSA is clear, and the legislative history of the Settlement Act confirms the plain and unambiguous meaning of the extinguishment provisions.

C. The Court of Appeals Correctly Held That the United States Has Fully Satisfied Its Obligation To Protect the Inupiats' Subsistence Culture.

Contrary to petitioners' assertions, Petition at 13, 53-54, the court of appeals did not hold that the United States has no substantive obligation to protect the Inupiats' subsistence culture. The Inupiats' alleged international-law right to control the ocean areas they use for subsistence purposes was rejected on narrower grounds. As the court of appeals observed, petitioners failed to produce any authority "that could be interpreted as imposing upon the United States a greater obligation to protect the subsistence culture of the Natives than that imposed . . . by federal domestic law." 746 F.2d at 572. Because the United States was held to have fully satisfied all such domestic obligations in a previous lawsuit

brought on behalf of the Inupiats, *Andrus, supra,* 642 F.2d at 611-13, the court of appeals correctly dismissed petitioners' effort to relitigate those issues. 746 F.2d at 572.

Alternatively, the court of appeals held that petitioners' claim must fail even if the international agreement on which petitioners rely[20] did contain greater obligations than domestic federal law. That agreement has not been ratified by the United States, and petitioners' claim that all its provisions are now part of customary international law is without foundation. Petitioners failed to make "any showing of a universal recognition of such a greater obligation that would be necessary to establish a claim based on the law of nations." 746 F.2d at 572.[21]

In fact, the only principle of international law applicable to this case flatly prohibit the Inupiats' claim of sovereignty and ownership. Treaties ratified by the United States provide that no nation or person may exercise exclusive rights in the water of the high seas.[22] The court of appeals' holding is both consistent with and compelled by the law of nations and thus presents no important questions of federal law requiring this Court's attention.

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[20] International Covenant on Civil and Political Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966).

[21] Filartiga v. Pena-Irala, 630 F.2d 876, 881-84 (2d Cir. 1980), relied on by petitioners, does not hold or even suggest that any part of the Covenant besides the section proscribing torture reflects the law of nations binding on the United States.

[22] *See, e.g.,* Convention on the High Seas, Art. 2, *done* Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200.

CONCLUSION

Petitioners have failed to demonstrate that this case presents any substantial questions of federal law of sufficient importance to warrant this Court's consideration. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted,

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August 1985

APPENDIX

APPENDIX A

List Required by Rule 28.1

Amoco Production Company

Amoco Corporation
Amoco Company
Amoco Canada Petroleum Company, Ltd.
Amoco Credit Corporation
Amoco Oil Holdings S.A.
Analog Devices Inc.
Cetus Corporation
Cyprus Mines Corporation

Atlantic Richfield Company

ABE Beverage, Inc.
Agro Internacional, S. de R. L. de C.V.
Almeg Extrusion Company, Inc.
Alpart Farms (Jamaica), Ltd.
Alumina Contractors Ltd.
Alumina Partners of Jamaica
Alyeska Pipeline Service Company
Ambler Mining Company
Anaconda Exploration New Zealand Limited
Anaflex, S.A. de C.V.
Anamax Mining Company
Anamet, S.A. de C.V.
ARCO Australia Coal Pty., Ltd.
ARCO Chemical IBERICA, S.A.
ARCO Oil Limited
ARCO Solar Nigeria, Ltd.
Arilan, S.A. de C.V.
Arpet Petroleum Limited
A/S Skaland Graftiverk
Atlantic Richfield Oil Limited

Atlantic Richfield Company (continued)

Atlantic Richfield de Mexico, S.A. de C.V.
Aughinish Alumina, Ltd.
Aughinish Estates Limited
Aughinish Finance, Limited
Aughinish Property (Nominees), Limited
Badger Pipeline Company
Bingham Development Company
Black Lake Pipe Line Company
Blair Athol Coal Pty., Limited
British American Metals Company, Limited
Candel International, Limited
Caribou-Chaleur Bay Mines Ltd.
Caribou-Smith Mines Ltd.
Chile Copper Company
Cobre de Hercules, S.A.
Cobre de Mexico, S.A.
Cobrecel, S.A. de C.V.
Colonial Pipeline Company
Compania Minera Dos Republicas S.A. de C.V.
Compania Minera Kappa, S.A.
Compania Minera Penacobre, S.A.
Compania de Petroleo Ganso Azul, Ltda.
Cook Inlet Pipe Line Company
Cupro San Luis, S.A. de C.V.
Curragh Coal Sales Co. Pty. Ltd.
Delaware Bay Transportation Company
Dexter de Mexico, S.A.
Dixie Pipeline Company
East Texas Salt Water Disposal Co.
85819 Canada Limited
Eisenhower Mining Company
Empresa de Comercio Exterior Mexicano, S.A. de C.V.

Atlantic Richfield Company (continued)

Ericsson
Flower Street Limited
Gravity Adjustment, Inc.
Greater Pacific Limited
Griffith-Consumers Company
Hardy Oil Company
Imperial Eastman de Mexico, S.A.
Impulsora De Cobre, S.A. de C.V.
Indelta, S.A. de C.V.
Industrias Tecnos, S.A. de C.V.
Iricon Agency Ltd.
Jamaica Alumina Security Company Ltd.
Kenai Pipe Line Company
Kronos, Computacion y Teleproceso, S.A. de C.V.
Kuparuk Transportation Capital Corporation
Kuparuk Transportation Company
Las Quintas Serenas Water Company
Lavan Petroleum Co.
Lingobronce, S.A.
Manufacturas de Cintas Metalicas, S.A.
Manufacurera Mexicana De Partes Para Automoviles, S.A. de C.V.
Mayflower Mining Company
Mexicana de Cospeles, S.A. de C.V.
R. W. Miller (Holdings) Limited
Minera Anaconda Limitada
Montoro, Empresa Para La Industria Quimica Nacional de Cobre, S.A.
New Bingham Mary Mining Company
Nihon Oxirane Company, Ltd.
Nordisk Mineselskab A/S
P. T. Arutmin Indonesia
Park City Ventures

Atlantic Richfield Company (continued)

Park-Cummings Mining Company
Park-Premier Mining Company
Participaciones Mexicanas, S.A. de C.V.
Platte Pipe Line Company
Prince Consolidated Mining Company
Productos Especiales Metalicos, S.A.
Productos Laminados de Cobre, S.A. de C.V.
Richfield U.K. Petroleum, Limited
Rodman, Inc.
Saudi Cable Company
Servicios Industriales Nacobre, S.A.
Sinclair (U.K.) Oil Company Limited
Sinclair Venezuelan Oil Company
Smoke House Copper Mining Company
Sociedade Anonima Marvin
Solar Energy Center (E.C.)
Solvamex, S.A. de C.V.
Stup & Costello, Inc.
SUMIARCO Company Limited
Swecomex, S.A.
Tecumseh Pipe Line Company
Texas-New Mexico Pipe Line Company
Transcobre, S.A. de C.V.
Trans Mountain Oil Pipe Line Company
Tubos Flexibles, S.A.
Union de Credito Industrial Vallejo, S.A.
United Park City Mines Company
The Walworth Company
West Mayflower Mining Company
William Prym de Mexico, S.A.

BP Alaska Exploration, Inc.

The British Petroleum Company p.l.c.
BP International Limited
BP North America Inc.

Chevron U.S.A. Inc.

Atlas Supply Company
Canyon Reef Carriers, Inc.
Compania Commercial Chevron S.A.
Felix Oil Company
Kenai Pipe Line Company
Kentucky Agricultural Energy Corporation
Long Beach Oil Development Company
Plantation Pipe Line Company
Standard Pacific Gas Line Inc.

Cities Service Company

Cities Service Oil and Gas Corporation
Occidental Petroleum Investment Co.
Occidental Petroleum Corporation
Basin Ridge Coal Company

Conoco, Inc.

E.I. du Pont de Nemours & Co.
Juliana Mining Co.
Big Sky of Montana Realty, Inc.
Cit-Con Oil Corporation
Conch International Methane Ltd.
Condea Chemie GmbH
Condea Chimie S.a.r.l.
Du Pont Scandinavia AB
AB Branslecentralen

Conoco, Inc. (continued)

ARA Aktiebolag
ARA Bolagen AB
ARA Fotogenservice AB
ARA Gavle AB
ARA Jonkoping AB
ARA Norrkoping AB
Conara AB
Jet Trading AB
Svenska Kol ARA AB
Vaermecenter Sven Meijer Aktiebolag
Conch L.N.G.
K/S Statfjord Transport A.S. & Co.
Statfjord Transport A.S.
Conrhein Coal Co.
Cardinal River Coals, Ltd.
Neptune Bulk Terminals (Canada) Ltd.
Contochu Inc.
Harmar Coal Co.
Mathies Coal Co.
Vawn Pty. Ltd.
Tongue River Holdings, Inc.
Tongue River Railroad
Oasis Oil Co. of Libya, Inc.
Colonial Pipeline Company
Dixie Pipeline Company
Explorer Pipeline Company
Lake Charles Pipe Line Company
Pioneer Pipe Line Company
Platte Pipe Line Company
Seadock, Inc.
Seaway Pipeline, Inc.
Yellowstone Pipe Line Company
Felix Oil Company

Conoco, Inc. (continued)

Jupiter Chemical Inc.
Kettleman North Dome Assoc.
Long Beach Oil Development Company
Oberrheinische Mineraloelwerke GmbH
Petco Enterprises Ltd.
Petrocokes, Ltd.
Petroleum Terminals, Inc.
Iricon Agency, Ltd.
Southern Facilities, Inc.
The Standard Shale Products Company
Tidelands Royalty Trust
Associated Petroleum Terminals Ltd.
Benzene Marketing Co. Ltd.
Cliffe Storage Ltd.
Crude Oil Terminals (Humber) Ltd.
Humber Oil Terminals Trustee Ltd.
Petroleum Storage Ltd.
Warwickshire Oil Storage Ltd.
K/S Statfjord Transport A.S. & Co.
Statfjord Transport A.S.

Exxon Corporation

Abu Dhabi Company for Onshore Oil Operations
Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Aditivos Orinoco, C.A.
Adria-Wien Pipeline Gesellschaft mit beschrankter Haftung
AFCO AB
Aishin Sekiyu K.K.
Aktiebolaget Svensk Petroleumadministration
Alberta Products Pipe Line Ltd.
Al-Jubail Petrochemical Company

Exxon Corporation (continued)

Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Andian National Corporation, Limited
Arabian American Oil Company
Aramco Overseas Company
Aramco Services Company
A/S Futurum
A/S Hydrantanlaegget Kobenhavns Lufthavn, Kastrup
Asakawa Sekiyu K.K.
Asociacion Civil "Academy La Castellana"
Atlas Supply Company
Atlas Supply Company of Canada Limited
Australian Synthetic Rubber Company Limited
Aviation Services Saudi Arabia Limited
Awaji Gas Nenryo Kabushiki Kaisha
Azuma Sekiyu K.K.
B.V. Autoservicebedrijf "de Beuk" Leimuiden
Bangkok Aviation Fuel Services Limited
Banshu Ekika Gas K.K.
Bayerische Erdgasleitung G.m.b.H.
BEB Gewerkschaften Brigitta und Elwerath Betriebsfuhrungsgesellschaft m.b.H.
Bel-Air Entreposage S.A.
Building Products of Canada Limited
Byron Creek Collieries (1983) Limited
Canada Wide Mines Ltd.
Carnduff Gas Limited
Castle Peak Power Company Limited
Champlain Oil Products Limited
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Sekiyu Hanbai K.K.

Exxon Corporation (continued)

Cia Refinadora Petrolera Santo Domingo, Inc.
Colmant Cuvelier Dodge S.A.
Commercial Polymers Pty. Ltd.
Compagnie d'Etancheite Africaine en Cote d'Ivoire S.A.
Compania Minera Disputada de Las Condes S.A.
Comptoir Auxiliaire du Petrole
DFTG Deutsche Flussigerdgas Terminal GmbH
Daihatsu Sekiyu K.K.
Daiichi Kouyu K.K.
Daitsu Sangyo K.K.
Delta Rope & Twine Limited
Depot Petrolier du Gresivaudan
Depots de Petrole Cotiers
Depots Petrolier de la Corse
Det Gronlandske Olieaktieselskab
Deudan-Holding GmbH
Deutsche Erdgas Transport G.m.b.H.
Deutsche Transalpine Oelleitung G.m.b.H.
Devon Estates Limited
Dixie Pipeline Company
Dodge de Mexico S.A. de C.V.
Drivmedelscentralen Aktiebolag
Dukhan Service Company
E S F Limited
Eagle Kenso K.K.
East Japan Oil Development Company, Limited
East Texas Salt Water Disposal Company
Eiko Sekiyu K.K.
Ejendomsaktieselskabet af 12. juni 1964
Elwerath Erdol und Erdgas AG
Emirates Oilfield Chemicals Company
Emori Sekiyu K.K.

Exxon Corporation (continued)

Emsland-Erdolleitung G.m.b.H.
Entrepot Petrolier de l'Aveyron (E.P.A.)
Erdgas-Verkaufs-Gesellschaft m.b.H.
Escuela Las Morochas, C. A.
Esso Chimie
Esso Energie G.I.E.
Esso Exploration and Production Angola Inc.
Esso Italiana S.p.A.
Esso Malaysia Berhad
Esso of Canada Limited
Esso Resources Canada Limited
Esso Societe Anonyme Francaise
Esso Standard Tunisie S. A.
Exact Reisebyra A/S
Exxon Chemical Pakistan Limited
F. T. Giken Kabushiki Kaisha
Federal Pacific Electric de Mexico S.A. de C.V.
Federal Pioneer Limited
Ferngas Nordbayern G.m.b.H.
Ferngas Salzgitter GmbH
Forenade Svenska Oljeimportorers AB
Forjas de Colombia, S.A.
415572 Ontario Inc. (operating as Kentom Steel)
Fuji Kogyo K.K.
Fuji Unyu K.K.
Fukui Sekiyu K.K.
General Bussan K.K.
General Highway K.K.
General Petrochemical Industries Limited
General Sekiyu K.K.
General Sekiyu Okinawa Hanbai K.K.
General Sekiyu Overseas Ltd.
General Shipping Co. Ltd.

Exxon Corporation (continued)

General Unyu Kabushiki Kaisha
Geobutane - Lavera
Gewerkschaft Brigitta
Gewerkschaft Elwerath
Gewerkschaft Elwerath & Co. GmbH.
Gewerkschaft Erdol-Raffinerie Deurag-Nerag
Gilbarco do Brasil S. A. - Equipamentos
Goroku Sekiyu K.K.
Grande Ecaille Land Company, Inc.
Groupement Immobilier Petrolier
Groupement Petrolier Aviation
Groupement Petrolier du Finistere G.I.E.
Groupement pour l'Etude d'un Pipeline
Bordeaux Toulouse
Hankyu Ferry K.K.
Hannoversche Erdolleitung G.m.b.H.
Hanshin Kyowa Sekiyu K.K.
Hayakawa Seikiyu K.K.
Heinrich Schneider Spedition GmbH
Hiroshima General Gas Juten Kabushiki Kaisha
Hoei Sekiyu K.K.
Hokuyu Sekiyu K.K.
Houston Regional Monitoring Corporation
Hydranten-Betriebsgesellschaft
Hydrierwerke Poelitz Aktiengesellschaft
Immeuble Entretien Service I.E.S.
Imperial Oil Limited
The Imperial Pipe Line Company, Limited
Inada Ekka Gas Kabushiki Kaisha
Industrias Reliance S.A. de C.V.
Industry Promotion Enterprises Limited
Intecom, Inc.
Interface Mechanisms Inc.

Exxon Corporation (continued)

Internationale Gas Transport Maatschappij B. V.
Interprovincial Pipe Line (Alberta) Ltd.
Interprovincial Pipe Line Limited
Interprovincial Pipe Line (NW) Ltd.
Iranian Oil Participants Limited
Iranian Oil Service (Holdings) Limited
Iranian Oil Service Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions, Limited
Japan Butyl Company Limited
Japan Coal Liquefaction Development Company, Ltd.
Jersey Nuclear-Avco Isotopes, Inc.
K.K. Aizu General
K.K. Daimaru
K.K. General Sekiyu Hanbaisho
K.K. Genetech
K.K. Heian Sekiyu
K.K. Kanagawa Sekiyu Shokai
K.K. Kyoei Shosha
K.K. Kyowa Sekiyu Service
K.K. Marugo Izumasa Shoten
K.K. Niimi Kirun
K.K. Nippatsu
K.K. Standard Sekiyu Osaka Hatsubaisho
K.K. Toko
K.K. Toresen
K.K. Uwano Sekiyu Shokai
K/S ejendomsselskabet af 8 oktober 1967
K/S Hoje Taastrup Storcenter II
K/S Statfjord Transport A/S & Co.
Kabushiki Kaisha Sankyo Plastics
Kai Tak Refuellers Company Limited

Exxon Corporation (continued)

Kanto Kygnus Sekiyu Hambai K.K.
Karlsruhe-Stuttgart Rohrleitung Gesellschaft mbH
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha
Kawasaki Naiko Kabushiki Kaisha
Keihin Kygnus Kabushiki Kaisha
Keiyo Sekiyu Hanbai K.K.
Kenarin Agencies Ltd.
Kenya Petroleum Refineries Limited
Kepco Mfg. Inc.
Kibo Sekiyu Hanbai K.K.
Kinwa Sekiyu K.K.
Kobe Port Service Kabushiki Kaisha
Kobe Standard Sekiyu K.K.
Kowa Sekiyu K.K.
Kowloon Electricity Supply Company Limited
Kygnus Ekka Gas Kabushiki Kaisha
Kyngus Kosan Kabushiki Kaisha
Kygnus Marketing Service K.K.
Kyngus Sekiyu K.K.
Kyushu Eagle K.K.
LPL Investments, Inc.
La Compagnie Electrique Pioneer du Quebec, Inc.
Lakehead Pipe Line Company, Inc.
Laykold Corporation
LEAG Aktiengesellschaft fur luzernisches Erdol
Les Docks des Petroles d'Ambes
Les Restaurants Le Voyageur Inc.
Long Beach Oil Development Company
Magota Sekiyu K.K.
Mainline Pipelines Limited
Makoto Sekiyu Kabushiki Kaisha

Exxon Corporation (continued)

Maple Leaf Petroleum Limited
Maquinas de Coser y Bordar Sigma, S.A.
Mars-Alcatel, S.A.
Marugo Gas K.K.
MEGAL FINCO
MEGAL GmbH
Meiji Sekiyu K.K.
MESBIC Financial Corporation of Houston
Mikawa Bussan K.K.
Mittelrheinische Erdgas Transport Gesellschaft mit beschrankter Haftung
Montreal Pipe Line Limited/Les Pipe-Lines Montreal Limitee
NPC Services, Inc.
Nakabayashi Sekiyu K.K.
Nansei Oil Terminal K.K.
Nansei Sekiyu Kabushiki Kaisha
Native Venture Capital Co. Ltd.
Near East Development Corporation
Neptune Bulk Terminals (Canada) Ltd.
Niagara Structural Steel (St. Catharines) Limited
Nichimo Kabushiki Kaisha
Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nikko Sangyo K.K.
Nippon Unicar K.K.
Nisku Products Pipe Line Company Limited
Nissei Sekiyu Kabushiki Kaisha
Norddeutsche Erdgas-Aufbereitungs G.m.b.H.
Norddeutsche Mineraloelwerke Stettin G.m.b.H.
Norddeutsche Oelleitungs-gesellschaft m.b.H.

Exxon Corporation (continued)

Nordrheinische Erdgas Transport Gesellschaft mit beschrankter Haftung
Nord-West Oelleitung G.m.b.H.
Norforge Inc.
Norsteel Limited
Northern Steel Co. Ltd.
Northward Developments Ltd.
Northwest Company, Limited
Nottingham Gas Limited
Office Prive d'Assurances et de Courtages
Offshore Medical Support Limited
Oil Field Chemicals Company (Saudi Arabia) Ltd.
Oil Service Company of Iran
Oil Transport Company (Saudi Arabia) Limited
Oldenburgische Erdol Gesellschaft m.b.H.
Omnisport Australia International Pty. Ltd.
Omnisport B.V.
Omnisport International Inc.
Omnisport International (U.K.) Limited
Omnisport International (U.S.) Inc.
Omniturf Surfaces (N.A.) N.V.
107580 Canada Inc.
139675 Canada Limited
140129 Canada Limited
140233 Canada Limited
Osaka Propane Gas Hambai Kabushiki Kaisha
Osaka Sekiyu Gas Yuso K.K.
P. T. Stanvac Indonesia
Pars Investment Corporation
Peninsula Electric Power Company Limited
Petroleum Refineries (Australia) Proprietary Limited

Exxon Corporation (continued)

Petroleum Services (Middle East) Limited
Petroleum Tankship Company, Inc.
Petrosvibri S.A.
Photonic Automation Inc.
Pinpoint Retail Systems Inc.
Pipeline Service
Pipeline Service Iran
Pipeline Service U.K.
Pipe Line Services, Inc.
Plantation Pipe Line Company
Polder-Seehafen-Harburg GmbH
Portland Pipe Line Corporation
Potencia Industrial S.A.
Productos Lorain de Mexico S.A. de C.V.
Progas A/S
Raffinerie du Midi S.A.R.L.
Rainbow Pipe Line Company, Ltd.
Redwater Water Disposal Company Limited
Refineria Petrolera Acajutla S.A.
Reliance Electric & Engineering Company de Mexico S.A. de C.V.
Reliance Electric Limited
Reliance Electric S.A. (Spain)
Renix Co. Ltd.
Renown Building Materials Limited
Rheingas Erdgasleitungs-Gesellschaft m.b.H.
Rotterdam-Antwerpen Pijpleiding (Nederland) N.V.
Ruhrgas Aktiengesellschaft
S.A. du Pipeline a Produits Petroliers sur Territoire Genevois (SAPPRO)
S.O.P. - Societa Oleodotti Padani S. p. A.
Saitama Sekiyu Hanbai K.K.

Exxon Corporation (continued)

Sakurajima Futo K.K.
Sanko Oil Kabushiki Kaisha
Sanwa Kasei Kogyo Kabushiki Kaisha
Sanyo Sekiyu K.K.
Saraco S.A.
Saudi Arabian Lube Additives Company Limited
Schubert KG
SEAG Aktiengesellschaft fur schweizerisches Erdol
Sibu Kygnus Sekiyu Hambai Kabushiki Kaisha
Seismic Industries A/S
Self-Service de Blaak B.V.
Senpoku Oil Service K.K.
SERAM Societa per Azioni
Servacar Ltd.
Shehtah Drilling Limited
Shimoka Sekiyu Kabushiki Kaisha
Shimoyama Sekiyu K.K.
Shin-Nihon Yukagaku Kogyo K.K.
Shinohara Oil K.K.
Shizuoka Kanesho Hambai Kabushiki Kaisha
Smiley Gas Conservation Limited
Sociedad Anonima "Escuela Campo Alegre"
Sociedad de Inversiones de Aviacion
Sociedad Nacional de Oleoductos Ltda.
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azioni Raffineria Padana Olii Minerali-SARPOM
Societe Anonyme de la Raffinerie des Antilles
Societe Anonyme des Hydrocarbures
Societe Anonyme "Produits Lubrifiants de Madagascar" - PROLUMA S.A.

Exxon Corporation (continued)

Societe Civile de Mustapha Algerie
Societe Civile de Participation pour la Destruction des Dechets Industriels (SOCDI)
Societe Civile Immobiliere "Courcelles-Etoile"
Societe Civile Immobiliere de la Croix au Chene
Societe Civile Immobiliere du 195 Avenue de Neuilly
Societe Civile Immobiliere Khariessa
Societe Civile Immobiliere "Kleber-Etoile"
Societe Civile Immobiliere "Les Casseaux-Bougainville"
Societe de la Raffinerie d'Alger
Societe de la Reffinerie de Lorraine
Societe de Manutention de Carburants Aviation
Societe de Manutention de Carburants Aviation Dakar-Yoff, S.A.
Societe de Promotion et de Financement Touristique (CARTHAGO)
Societe d'Entreposage de San-Pedro
Societe des Pipe-Lines de Strasbourg
Societe des Transports Petroliers par Pipe Line
Societe d'Exploitation & de Developpement d'Operations Commerciales
Societe du Caoutchouc Butyl (SOCABU)
Societe du Depot Petrolier d'Hauconcourt
Societe du Parkins du Square Boucicaut
Societe du Pipe Line de la Raffinerie de Lorraine
Societe du Pipe-Line Mediterranee-Rhone
Societe du Pipeline Sud-Europeen
Societe Esso de Recherches et d'Exploitation Petrolieres Esso Rep
Societe "Geomines-Caen"

Exxon Corporation (continued)

Societe Havraise de Manutention de Produits Petroliers
Societe Hoteliere de la Petite Campagne
Societe Immobiliere Paris-Niel
Societe Ivoirienne d'Operations Petrolieres S.A.
Societe Malgache de Raffinage
Societe Reunionnaise d'Entreposage
Socony-Standard-Vacuum Oil Company (Petroleum Maatschappij)
Southern Natural Gas Development Pty. Ltd.
Standard Kosan Kabushiki Kaisha
Standard Service K.K.
Statfjord Transport A/S
Stockage Geologique de Gaz de Lavera
Suddeutsche Erdgas Transport Gesellschaft mit beschrankter Haftung
Suntech Company, Ltd.
Supertex, Inc.
Svensk Petroleumlagring Tre Aktiebolag
Sydis, Inc.
Syncrude Canada Ltd.
Synergistics Chemicals Limited
305120 Alberta Ltd.
346877 Ontario Limited
TAR-Tankanlage Rumlang AG
TBN Tanklager-Betriebsgesellschaft Nurnberg mbH
Taglu Enterprises Ltd.
Taihei Bussan K.K.
Taiko Sekiyu K.K.
Taisei Kogyo Sekiyu Hanbai K.K.
Taketsuru Yugyo K.K.
Tanaka Sekiyu Hanbai K.K.

Exxon Corporation (continued)

Tankanlage A. G., Mellingen
Tanklager Altishausen A. G.
Tanklager Gesellschaft
Tanklager-Gesellschaft Tegel
Tanklager Lechelles I S.A.
Tanklager Taegerschen AG
TecSyn International Inc.
Tecumseh Gas Storage Limited
THUMS Long Beach Company
Thyssengas G.m.b.H.
TIBA Speditions GmbH
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Company, Limited
Tokai General Sekiyu Hanbai K.K.
Toko Sekiyu K.K.
Toledo Scale Company de Mexico S.A. de C.V.
Toledo Werk GmbH
Tonen Energy International Corp.
Tonen Maintenance K.K.
Tonen Sekiyukagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology K.K.
Towa Sekiyu K.K.
Toyoshina Film Company, Ltd.
Trans-Arabian Pipe Line Company
Transalpine Finance Holdings S.A.
Transalpine Oelleitung in Oesterreich
Gesellschaft m.b.H.
Transgaz Lavera
Tsurumaru Unyu K.K.
Turkish Petroleum Company, Limited
UBAG - Unterflurbetankungsanlage Flughafen
Zurich

Exxon Corporation (continued)

Ulupna Estates Limited
Van Salt Water Disposal Company
W.A.G. Pipeline Pty. Ltd.
W. H. Adam, Ltee, Ltd.
Wako Jushi Kabushiki Kaisha
Wako Kasei Kabushiki Kaisha
Westdeutsche Erdolleitungs-G.m.b.H.
Westgas G.m.b.H.
Williamsport Properties Limited
Winnipeg Pipe Line Company Limited
Wohnungsbaugesellschaft, Steimbke-Rodewald G.m.b.H.
Worex Distribution
Worex et Cie
Worex S.A.R.L.
Wrenford Insurance Company Ltd.
Yasaka Sekiyu K.K.
Yellowstone Pipe Line Company
Yoshimi Gas Kabushiki Kaisha
Yuai Sekiyu K.K.
Yugen Kaisha Nishi Kobe Bosai Center

Gulf Oil Corporation

Electronic Marketing Systems, Inc.
Componentes Industriales Mexicandes, S.A.
General Atomic Europe Develop. Corp.
Hochtemperatur-Reactorban GMBH
West Texas Gulf Pipeline Co.
Solvent Refined Coal International, Inc.
Emery Joint Venture
North River Energy Co.
Gulf Oil Zaire S.A.R.L.

Gulf Oil Corporation (continued)

Gulf Canada Ltd.
A/S Jargul
A/S Jargul & Co. K/S
Kuwait Oil Company Limited
Plastigama, S.A.
Sarlux Spa - Refining 579
Gulf Oil Financial Corporation
Gulf Oil Realty Co. 819
China Gulf Oil Co., Ltd.
Hong Kong Refueling Co. Ltd.
Insco, Ltd.
Insco Holding and Finance Company N.V.
Britamco Ltd.
Cayman Kewanee, Ltd.
Kayeye Insurance Company, Ltd.
Pembroke Cracking Company
Raffinerie de Cressier, S.A.
Keydril (Nigeria) Ltd.
Pembroke Capital Company
Oklahoma Nitrogen Company
Colonial Pipeline Co.
Rio Blanco Oil Shale Part.
Laurel Pipeline Company
Harshaw/Filtrol Partnership - H/FP 325-762
Chicago Wire Goods Co. - H/FP
G.S. Equipment & General Supply
Harshaw Chemie G.M.B.H. - H/FP
Harshaw Galvanotecnia S.A. - H/FP
Harshaw International Corp. - Disc.
Harshaw - Juarez S.A. De C.V. - H/FP
Harshaw-Murata Kabushiki Kaisha - H/FP
Harshaw Nuclear Electronics, Inc. - H/FP
Industrial Nickel, Inc. - H/FP

Gulf Oil Corporation (continued)

Lancer Chemical Corp. - H/FP
Harshaw Chemicals Limited - H/FP 381
Harshaw-Bryce & Co. Pty. Ltd. - H/FP
Harshaw Chemie B.V. - H/FP 549
Harshaw Holland N.V. - H/FP
Stibium, Inc. H/FP
Productos Quimicos Somox, Ltda - H/FP
Harshaw Chemical of Canada, Ltd. - H/FP
Valley Pines Associates
Allied General Nuclear Services
Explorer Pipeline Company
Midwest Carbide Corporation
Transocean Group Inc.
Transinsco Inc.
Bio Research Center

Hamilton Brothers Oil Company

Hamilton Oil Corporation
Hamilton Brothers Petroleum Corporation
Hamilton Brothers Oil and Gas Corporation
Hermes Consolidated, Inc.
Tejas Gas Corp.

Murphy Oil Corporation

Ozark Fuels Corporation
Butte Pipe Line Company
Collins Pipeline Company
T&M Terminal Company
Murphy Oil Company, Ltd.
Manito Pipe Lines, Ltd.
Murphy Finance International Inc.
Murphy Overseas Exploration Company

Murphy Oil Corporation (continued)

Murphy Overseas Finance Corporation
Ocean Drilling & Exploration Company
Odeco Towing Services Pty.
Ben Odeco (Bermuda) Limited
Australian Odeco Pty. Limited
Ben Odeco Limited
Sub Sea Offshore (B) Berhad
Strongwork Diving (Saudi Arabia) Ltd.
Sub Sea Dolphin A/S

Phillips Petroleum Company

Acurex Corporation
Aero Oil Company
Canada Western Cordage Company Limited
Cochin Refineries Limited
Industrias Negromex, S.A. de CV
Phillips Carbon Black Limited

Rowan Petroleum, Inc.

Rowan Companies, Inc.
Perforadora Guerrero Negro, S.A. de C.V. (Mexico)

Shell Oil Company

Shell Petroleum N.V.
Royal Dutch Petroleum Company
Shell Transport and Trading Company
George Newman & Company
Huntsman Chemicals, Inc.
United Scientific, Inc.
Quazite Corporation

Shell Oil Company (continued)

First Harlem Securities Corporation
Fractionation Research, Inc.
Gravcap, Inc.
Heat Transfer Research, Inc.
Inland Corporation
LOOP, Inc.
MESBIC Financial Corporation of Houston
Oil Companies Institute for Marine Pollution Compensation Limited
Oil Insurance Limited
Pioneer Equipment Co.
Seadock, Inc.
Pecten Cameroon Company
Thums Long Beach Company
East Texas Salt Water Disposal Company
Grande Ecallie Land Company, Inc.
Van Salt Water Disposal Company
Wyoming Industrial Development Corporation
Cortez Capital Corporation
Plastibeton, Inc.
Butte Pipe Line Company
Dixie Pipeline Company
Explorer Pipeline Company
Locap, Inc.
Olympic Pipe Line Company
Plantation Pipe Line Company
West Shore Pipe Line Company
Wolverine Pipe Line Company

Sohio Alaska Petroleum Co.

The Standard Oil Company

Texasgulf, Inc.

Elf Aquitaine, Inc.
Compania Exploradora del Istmo, S.A.
Societe National Elf Aquitaine, S.A.
St. Laurens Harbor Storage Company

Union Oil Company of California

Keneb Services, Inc.
Magma Power Company
Union Exploration Partners, Ltd.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Brief in Opposition of Respondents Amoco Production Company, *et al.* were mailed by first-class mail, postage paid, this 12th day of August, 1985, to:

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